TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~240~~ 42.

THE SECURITY TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF SUMNER W. MATTESON, DECEASED, PLAINTIFF IN ERROR,

vs.

WILLIAM H. DENT, AS RECEIVER OF THE FIRST NATIONAL BANK OF DECORAH.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 28, 1901.

(18,034.)

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1900, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the seventh day of May, A. D. 1900, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the sixteenth day of November, A. D. 1899, a transcript of record, pursuant to a writ of error directed to the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, was plaintiff in error, and William H. Dent, as receiver of the First National Bank of Decorah, was defendant in error, which said transcript of record is in the words and figures following, to wit:

1 UNITED STATES OF AMERICA:

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Pleas before the honorable judges of the circuit court of the United States of America for the district of Minnesota, third division, of the January, 1899, term of said court, held in the city of St. Paul, in said district, in the year of our Lord 1899.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 22nd day of January, A. D. 1897, came the plaintiff and filed in the clerk's office of said court its bill of complaint in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The petitioner above named respectfully shows to the court that the First National Bank of Decorah was and is a corporation duly

incorporated, organized and created under the national banking laws of the United States and is a citizen and resident of the State of Iowa and was prior to the 10th day of November, 1896, doing a general banking business at the city of Decorah in the State of Iowa.

That by reason of certain losses theretofore made, the said First National Bank of Decorah suspended its banking business, and all affairs of said bank were taken charge of by the Comptroller of the Currency of the United States, and thereafter, and on the 24th day of November, 1896, the petitioner above named was by said Comptroller of the Currency of the United States, and in conformity with the United States statutes in such case made and provided, appointed receiver of the said First National Bank of Decorah, and duly qualified and entered upon the discharge of his duties as such receiver, and has ever since been and now is the duly appointed, qualified and acting receiver of the said bank, and at all the times hereinbefore stated, ever since has been and now is a citizen and a resident of the State of Iowa.

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II.

That the defendant, The Security Trust Company is a corporation created under and by virtue of the laws of the State of Minnesota, and doing business in the State of Minnesota, and having its principal place of business at the city of St. Paul, county of Ramsey, State of Minnesota, and is a citizen and resident of the State of Minnesota and was duly appointed administrator of the estate of Sumner W. Matteson, deceased, by the proper probate court in the State of Minnesota, to wit, the probate court of the county of Ramsey and State of Minnesota, on or about the 3rd day of September, 1895. That during his lifetime and at all the times hereinafter stated, the said Sumner W. Matteson, deceased, was a resident and citizen of the State of Minnesota.

III.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, otherwise known as S. W. Matteson, executed his certain promissory note in writing, whereby for value received he promised to pay to the order of himself, on demand, after date, the sum of thirteen hundred dollars ($1,300), with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures as follows, to wit:

No. —. $13,000.00

DECORAH, IOWA, *April 15th*, 1895.

On demand after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, thirteen hundred dollars, with interest at the rate of six per cent. per annum until paid.

Post-office, St. Paul, Minn.

(8'd) S. W. MATTESON.

Due ——. Demand.

29636.

Indorsed on back: S. W. Matteson. Interest paid hereon for six mos. to Oct. 15, '95. (Chge. ac.) $39.00.

That afterwards, to wit, on the 16th day of April, 1895, and before maturity of the said note, the said S. W. Matteson endorsed said note in blank, and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah. That heretofore, to wit, on the 16th day of April, 1895, the said First National Bank of Decorah purchased the said note, for value, before maturity, in the usual course of business, and without any notice of any defense or defenses to said note.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, otherwise known as S. W. Matteson, deceased, executed his certain other promissory note in writing, whereby for value received, he promised to pay to the order of himself four months after date, the sum of twenty-five hundred dollars, with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures as follows:

$2,500.00.

No. —.

DECORAH, IOWA, *April 15th*, 1895.

Four months after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, two thousand, five hundred dollars, with interest at the rate of six per cent. per annum until paid.

S. W. MATTESON.

(S'd)

29637. Due ——.
Post-office, St. Paul, Minn.
Due Aug. 15, '95.

Indorsed on back: S. W. Matteson. Interest paid hereon 6 mos. to Oct. 15, '95. (Ch'g'd ac.) $75.00.

That thereafter, to wit, on the 16th day of April, 1895, and before the maturity of said note, the said S. W. Matteson endorsed said note in blank and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah, above named. That heretofore, to wit, on the 16th day of April, 1895, the First National Bank of Decorah purchased the said note, for value, before maturity, in the usual course of business, without any notice of any defense or defenses to said note.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, deceased, executed his certain other promissory note in writing, whereby for value received he promised to pay to the order of himself, five months after date the sum or twenty-five hundred dollars, with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures as follows, to wit:

No. —. $2,500.00

DECORAH, IOWA, *April 15th*, 1895.

Five months after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, 4 two thousand and five hundred dollars, with interest at the rate of six per cent. per annum until paid.

(S'd) S. W. MATTESON.

Post-office, St. Paul, Minn.

29638. Due Sept. 15, 1895.

Indorsed on back: S. W. Matteson. Interest paid hereon for 6 mos. to Oct. 15, '95. (Ch'g'd ac.) $75.00.

That afterwards on the 16th day of April, 1895, and before the maturity of the said note, the said S. W. Matteson endorsed the note in blank and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah. And on the 16th day of April, 1895, the said First National Bank of Decorah purchased said note for value, before maturity, in the usual course of business, without any notice of defense or defenses to said note.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, above named, executed his certain other promissory note in writing whereby for value received he promised to pay to the order of himself, six months after date, the sum of twenty-five hundred dollars, with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures, as follows, to wit:

No. —. $2,500.00.

DECORAH, IOWA, *April* 15, 1895.

Six months after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, two thousand and five hundred dollars, with interest at the rate of six per cent. per annum until paid.

(S'd) S. W. MATTESON.

29639.
Post-office, St. Paul, Minn.
Due Oct. 15–18, '95.

Indorsed on back: S. W. Matteson. Interest paid hereon for 6 mos. to Oct. 15, '95. (Ch'g'd ac.) $75.00.

That afterwards and on the 16th day of April, 1895, and before the maturity of the said note, the said S. W. Matteson endorsed said note in blank and said note was, for value received, sold, transferred, and assigned by the said Matteson to the First National Bank of Decorah. And on the 16th day of April, 1895, the said First National Bank of Decorah purchased said note for value, before maturity, in the usual course of business, without any notice of any defense or defenses to said note.

That heretofore, to wit, on the 19th day of October, 1894, the said Summer W. Matteson, otherwise known as S. W. Matte-
5 son, executed his certain other promissory note in writing, whereby, for value received he promised to pay to the order of himself, six months after date, the sum of three thousand dollars, with interest thereon at the rate of six per cent. per annum from date until maturity and interest thereon after maturity at the rate of eight per cent. per annum until paid. That said promissory note (—) in words and figures as follows, to wit:

No. —. $3,000.00.

DECORAH, IOWA, *Oct.* 19, 1894.

Six months after date for value received, I promise to pay myself or order, at the First National Bank of Decorah, Iowa, three thousand dollars, with interest at the rate of six per cent. per annum before due, 8 per cent. after until paid.

(8'd) S. W. MATTESON.

Post-office ——, Due ——.
Due April 19–22, '95.
No. 29144.

(Indorsed on back:) S. W. Matteson. Interest paid thereon to maturity ($90.00) (ch'g'd ac.).
92. $116. Paid hereon on ac. interest (ch'g'd ac.).
$800.00 paid hereon, as of date Feb'y 18, '96, eight hundred dollars.

That afterwards, to wit, on the 19th day of October, 1894, before the maturity of the said note, the said Matteson endorsed said note in blank, and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah, and on said 19th day of October, 1894, the said First National Bank of Decorah purchased said note for value before maturity, in the usual course of business, without any notice of defense or defenses to said note.

That the said First National Bank of Decorah at the time of its suspension and at the time it was, as hereinbefore set forth, taken charge of by the Comptroller of the Currency of the United States, was the *bona fide* holder and owner of all of said notes hereinbefore described and set forth, all of which said notes at the time of the appointment of your petitioner as receiver of said First National Bank of Decorah, since said 24th day of November, 1896, has been and now is the owner and the holder of said notes above described and all thereof. And that no part of said notes had been paid, except the interest on the first four notes herein set forth, to October
15, 1895, and the sum of eight hundred dollars, together
6 with interest to the 18th day of February, 1896, paid and endorsed on the note last hereon described, dated October 19, 1894. That the statutes of the State of Iowa authorize and make legal a contract for the payment of a greater rate of interest after

maturity than before maturity. That all of said above-described notes were negotiated and delivered by the said Matteson to said First National Bank of Decorah in the city of Decorah and State of Iowa.

IV.

That the defendant, as administrator of the estate of said Sumner W. Matteson, deceased, has in its hands and under its control, a large amount of property, money and effects, which belonged in his lifetime to the said Sumner W. Matteson, and petitioner, on information and belief alleges that the property, money and effects remaining in the hands of said defendant and under its control *is* more than sufficient to pay the amount due this petitioner upon said promissory note hereinbefore described and set forth, after the payment of all just debts and charges against the estate of the said Sumner W. Matteson. That the estate of said Sumner W. Matteson is now in process of settlement, and in the probate court of Ramsey county, Minnesota, and has not been fully or finally settled and probated, and that said administrator has never been discharged and is still the administrator of the said estate of said Sumner W. Matteson, deceased.

V.

That no part of said notes has been paid, except as herein alleged, and petitioner had demanded that defendant make payment thereof out of the funds, money and property in its hands and belonging to the estate of said Sumner W. Matteson, and although said defendant at all times since its appointment as such administrator well knew that said notes were due and unpaid, and were held by the said First National Bank of Decorah up to the time of the appointment of your petitioner herein, and by said petitioner since said appointment of your petitioner as receiver, defendant has neglected and refused to pay said notes or any part thereof.

Wherefore, petitioner demands judgment against the defendant for the sum of eleven thousand eighty-two and $\frac{4}{100}$ dollars ($11,082.40), and interest on eight thousand and eight hundred dollars ($8,800), at the rate of six per cent. per annum from and since the 15th day of October, 1895, and interest at the rate of eight per cent. per annum on the sum of two thousand two hundred eighty-
7 two and $\frac{4}{100}$ dollars ($2,282.40) from and since the 18th day of February, 1896, together with the costs and disbursements of this action.

STRINGER & SEYMOUR,
Attorneys for Petitioner, National German-American Bank Bldg., St. Paul, Minnesota.

Complaint. Filed Jan. 22, 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

STATE OF IOWA, } ss:
County of Winneshiek, }

William H. Dent came before me personally and being first duly sworn, deposes and says, that he is the petitioner in the above-entitled action; that the foregoing complaint is true of his own knowledge, except as to those matters therein stated on his information and belief, and that as to those matters he believes it to be true.

WILLIAM H. DENT.

Subscribed and sworn to before me this 20th day of January, 1897.

[NOTARIAL SEAL.] AMELIA NEUFERT,
Notary Public, Winneshiek City, Iowa.

And thereupon, upon application of said attorneys a summons was duly issued out of said court under the seal thereof and in words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In the Circuit Court of the United States for the District of Minnesota.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Plaintiff,
against
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant. } Summons.

The President of the United States of America to the defendant above named, Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in St. Paul, county of Ramsey, and State of Minnesota, and file your answer in the clerk's office, within twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint aforesaid, the plaintiff will take judgment against you for the sum of eleven thousand eighty-two and 8 $\frac{40}{100}$ dollars ($11,082.40), and interest on eight thousand and eight hundred (—) ($8,800) at the rate of six per cent. per annum from October 15th, 1895, and interest at the rate of 8 per cent. per annum on the sum of two thousand two hundred, eighty-two and $\frac{40}{100}$ ($2,282.40) from Feb'y 18th, 1896, together with the costs and disbursements of this action.

For the marshal of the district of Minnesota to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme

U. S. Circuit Court Seal.

Court of the United States of America, this 22nd day of January, A. D. 1897. Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

STRINGER & SEYMOUR,
Plaintiff's Attorneys.

Summons. Returned and filed Jan. 23rd, A. D. 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that I served the annexed summons on the therein-named defendant, The Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, by handing to and leaving a true and correct copy thereof with Edward J. Hodgson, the president of said trust Co., personally at St. Paul in said district on the 23rd day of January, A. D. 1897.

R. T. O'CONNOR,
U. S. Marshal,
By GEO. D. HENRY, *Deputy*.

Fees $2.06.

Thereafter and on the 27th day of February, 1897, the following answer was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For answer to the plaintiff's (styled petitioner in the complaint) complaint in the above-entitled action, the defendant shows to the court and alleges:

9 It admits all the allegations contained in the first paragraph or subdivision of said complaint, except that it alleges that it has no knowledge or information sufficient to form a belief as to whether the said plaintiff was appointed receiver of said First National Bank of Decorah, or is such receiver, and therefore it denies that the plaintiff was so appointed receiver or is such receiver.

It admits all the allegations contained in paragraph or subdivision II of said complaint.

Further answering and for a separate defense herein it alleges

that it duly qualified as administrator of the estate of said deceased and proceeded to discharge its duties as such administrator under such appointment; that thereafter such proceedings were duly had in said probate court for Ramsey county, Minnesota, that said estate was fully administrated and settled, and that this defendant duly made and filed its final account of such administration, and that the said final account was by probate court duly examined, settled and allowed, and the residue of the property of said deceased, and of said estate, duly assigned and transferred to and vested in the next of kin and heirs of said deceased by said probate court, and this defendant as such administrator duly discharged by said probate court long before the commencement of the above-entitled action, that after the said property and estate had been so duly assigned and transferred to and vested in said heirs and next of kin, and the final account of this defendant examined, settled and allowed, and this defendant so discharged as administrator, and long before the commencement of the above-entitled action, this defendant duly delivered all the property and effects in its possession or under its control to the persons entitled thereto, and that it is not administrator of the estate of said deceased and has not been, nor has it had in its possession or under its control any money, property or effects of said deceased or his said estate, since long prior to the commencement of the above-entitled action.

That by reason of the foregoing facts the plaintiff cannot maintain said action.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, or any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that said Sumner W. Matteson, being then a resident of the city of St. Paul in the State of Minnesota, on the 22nd day of July, 1895, died in said city of St. Paul, leaving real and personal property in said Ramsey county and elsewhere in the State of Minnesota; that this defendant was duly appointed administrator of his said estate on Sept. 3, 1895, by the probate court for said Ramsey county as in the complaint alleged and duly qualified as such administrator and assumed the duties thereof as hereinabove alleged, and that it has continually since said day remained within the State of Minnesota; that the above-entitled action was not commenced until subsequent to the 20th day of January, 1897, and the right to commence or maintain the above-entitled action was barred prior to that day.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, nor any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that at the time it was so appointed administrator of the estate of said deceased, as in the complaint alleged, and letters of administration by said probate court to it issued, said probate court in accordance with the statute in such case made and provided duly made an order limiting the time within which creditors might present claims against said deceased for examination and allowance to six months from the 3rd day of September, 1895, and

appointing the first Monday in April, 1896 (being the 6th day of April, 1896), as the time when, and the court-room of said court as the place where, said court would examine and adjust the claims and demands of all persons against said deceased, that notice was duly given to all creditors and all persons interested by publication of said order as by statute in such case made and provided; that notwithstanding said order and the due publication thereof the plaintiff and the holders of said notes wholly failed and neglected to present the notes sued on in the complaint, or any claim on account thereof, to said probate court or to commence any action thereon in any court within the time limited in said order, or at the time therein fixed for hearing such claims, or at any time until after final settlement of said estate and the account of this defendant as such administrator, and that by reason of the premises the above-entitled action is barred.

Further answering it admits that said Summer W. Matteson, deceased, signed the promissory notes described in paragraph or subdivision III of said complaint and endorsed his name on the back thereof, but it denies that said notes or either of them were ever by him sold, transferred or assigned to the First National Bank of Decorah, and denies that said First National Bank of Decorah ever purchased the said notes or any of them for value before maturity in the usual course of business and without any notice of any defense or defenses thereto; it denies that said notes or any of them were
11 ever negotiated by the deceased or delivered by him to said bank; it alleges on information and belief that said notes were signed and so endorsed by said deceased and left with James H. Easton, who was then and at all times in said complaint mentioned president of said bank, with the express understanding and agreement between said deceased and said James H. Easton and upon the express condition that said deceased should be liable for and held for the payment of only seven-sixteenths of each of said notes, and that said James H. Easton should be held liable for and should pay nine-sixteenths of each of said notes, and upon the express condition that before said James H. Easton should negotiate or make any disposition thereof he should by endorsement on the back of each of said notes gurantee the payment thereof or otherwise endorse the same so as to become jointly liable thereon with the said deceased; that as to nine-sixteenths of the amount of each of said notes the said deceased was only an accommodation maker or endorser for said James H. Easton, and each of said notes was as to nine-sixteenths thereof signed by the said deceased wholly without consideration; that if said notes or any of them were purchased or taken by said bank, they were purchased or taken by said bank from said James H. Easton with full notice and knowledge of the facts hereinbefore stated.

As to any other of the allegations contained in said paragraph or subdivision III of said complaint, this defendant has no knowledge or information sufficient to form a belief.

The defendant denies that as administrator of the said estate of said deceased it has or at the time said action was commenced it had

in its hands or under its control any property, money or effects whatever which belonged in his lifetime to the said Sumner W. Matteson, and denies that the estate of said Sumner W. Matteson is now in process of settlement in said probate court and has not been fully or finally settled, and denies that it has not been discharged and is still the administrator of the estate of said Sumner W. Matteson, deceased, and alleges that long prior to the commencement of said action the estate of said deceased had been fully and finally settled in said probate court and the final account of this defendant as such administrator examined, settled and allowed, (*au*) all of the property then remaining in the hands of this defendant by said court duly transferred, assigned and vested in the heirs and next of kin of said deceased, and this defendant as such administrator finally discharged; and it alleges that long prior to the commencement of said action this defendant had fully paid over and accounted for all moneys and delivered the possession of all property of said deceased remaining in its hands to the persons thereto entitled.

12 It admits that subsequent to the settlement of said estate in said probate court and the final settlement and allowance of its final account as administrator and its discharge as such administrator, and subsequent to the time when it had paid over and transferred and delivered to the persons thereto entitled to all money, property and effects of said deceased remaining in its hands, but not before that time, the plaintiff in said action demanded payment of said notes from this defendant, and admits that it has not paid any part of said notes.

Except as hereinabove expressly admitted, it denies each and every allegation, matter and thing in said complaint contained whether as therein stated or otherwise.

Further answering and for a counter-claim (but not waiving any defense hereinbefore set out) it alleges that after the signing of said notes and while the same were in the possession of said bank, and on or about January 2, 1896, the said bank wrongfully and unlawfully converted and appropriated to its own use certain bonds in the Iowa and Minnesota Investment Company belonging to the said deceased in his lifetime, and to which this defendant as administrator of said estate was then entitled that said bonds were of the value of two thousand dollars.

Wherefore defendant prays the plaintiff take nothing by this action, and that it may recover costs and its disbursements herein, and in case it should be adjudged that it is liable for the payment of any of the amounts claimed in said complaint, then that judgment be rendered only for the excess of the amount which shall be so found due over and above the said sum of two thousand dollars and interest.

EDMUND S. DURMENT,
Attorney for Defendant.

Office: 411 & 410 N. Y. Life bldg. Residence: 825 Osceola avenue, St. Paul, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Edward J. Hodgson, being first duly sworn on oath says that he is the president of Security Trust Company the defendant in the above-entitled action; that the foregoing pleading is true of his own knowledge, except as to those matters which are therein stated on information and belief and as to those matters that he believes it to be true.

EDWARD J. HODGSON.

Subscribed and sworn to before me on this 15th day of February, A. D. 1897.

[NOTARIAL SEAL.] EDMUND S. DURMENT,
Notary Public, Ramsey County, Minn.

Answer. Filed February 27th, 1897. Henry D. Lang, clerk.

13 Thereafter and on the 20th day of March, 1897, the following stipulation extending time to reply was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

It is hereby stipulated and agreed by and between the parties and their respective attorneys, that the said petitioner may have to and inclusive of the 20th day of March, 1897, in which (*the*) file the reply to the answer of the defendant in the above-entitled cause.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorneys for Petitioner.

Stipulation. Filed March 20th, 1897. Henry D. Lang, clerk.

Thereafter and on the 20th day of March, 1897, the following reply was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For reply to the answer of the defendant in the above-entitled action, complainant denies each and every allegation, matter and

thing in said answer contained, and the whole thereof, except as admitted in the complaint herein, and as hereinafter admitted, qualified or specifically denied.

Petitioner admits that Sumner W. Matteson died at St. Paul, Minnesota, on or about the 22nd day of July, 1895, leaving a large amount of real and personal property in the county of Ramsey and elsewhere in the State of Minnesota, and that this defendant as administrator came into the possession of all of such personal property; admits that the action herein was not commenced until
14 the 22nd day of January, 1897; admits that the probate court of Ramsey county, Minnesota, made an order limiting the time within which creditors of said Matteson might present claims against said deceased, and that said notice was published in accordance with the order of said court. But petitioner specifically denies that said order, or said publication of notice to creditors was duly made, or was in compliance with the statute of the State of Minnesota, in such case made and provided, and charges the fact to be that, said order and said publication were improperly and illegally made; were not in conformity with the provision of the statute of the State of Minnesota, and were wholly null (—) void, and that the time limited by said court for the presentation of claims was less than the time allowed by the statute of the State of Minnesota for the presentation of such claims; admits that complainant did not present the notes described in said petition to said probate court within the time limited, and alleges that the complainant had no knowledge, information or notice that any proceedings whatsoever had been instituted or commenced in said probate court in the estate of said Sumner W. Matteson, deceased, until shortly before the commencement of this action.

Replying further and to the counter-claim alleged in the answer herein, petitioner denies each and every allegation in said counter-claim alleged and stated, and the whole thereof, and denies on information and belief that the bonds of the Iowa and Minnesota Investment Company referred to in said answer were of any substantial or material value whatsoever.

Except as herein expressly admitted, or in the complaint herein alleged, each and every allegation in said answer is denied.

Wherefore petitioner demands judgment against the defendant as in the complaint asked.

STRINGER & SEYMOUR,
Attorneys for Petitioner,
Nat. Ger. Am. Bank Bldg., St. Paul, Minnesota.

STATE OF MINNESOTA, }
County of Ramsey, } ss:

E. C. Stringer came before me personally and being first duly sworn, deposes and says that he is one of the attorneys for the petitioner in the above-entitled action and authorized to make this affidavit in his behalf. That he has read the foregoing reply and the same is true to the best of his knowledge, information and be-

lief, and the reason why this affidavit of verification is not
15 made by said petitioner is that said petitioner is absent from the county of Ramsey and State of Minnesota, wherein resides this affiant.

E. C. STRINGER.

Subscribed and sworn to before me this 19th day of March, 1897.
[NOTARIAL SEAL.] WILLIAM D. MITCHELL,
Notary Public, Ramsey County, Minnesota.

Reply. Filed March 20th, 1897. Henry D. Lang, clerk.

Thereafter and on the 18th day of January, 1899, the following stipulation of facts and waiver of jury trial was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The parties to the above-entitled action have stipulated and agreed that for the purpose of this action the following facts shall be taken to be true, and shall be spread upon the records, and the said action be tried and determined on such stipulation of facts by the court without a jury, a jury being waived by the parties.

The allegations contained in subdivisions I, II, III of the petition or declaration in the above-entitled action are true (being all of said petition or declaration preceding the subdivision thereof marked IV), except that Sumner W. Matteson having died July 22, 1895, did not after that date reside in St. Paul, Minnesota.

Sumner W. Matteson, mentioned in the pleadings, was a resident and citizen of the State of Minnesota from prior to January, 1894, until his death, during that time residing at the city of St. Paul, in Ramsey county, Minnesota. He died at the said city of St. Paul intestate, a resident thereof, and leaving real and personal property there situate on July 22, 1895.

Thereafter such proceedings were duly had in the probate court for Ramsey county, Minnesota, that said Security Trust Company, mentioned in the petition or declaration was duly appointed administrator of the estate of said deceased, and letters (—) administration issued out of said court thereon to it as such administrator, and it duly qualified and entered upon its duties as such administrator on September 3, 1895.

16 Thereafter and on September 3, 1895, said court made and entered the following order with reference to filing claims against said deceased, viz:

STATE OF MINNESOTA, }
County of Ramsey, } ss:

Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

Letters of administration on the estate of Summer W. Matteson, deceased, late of the city of St. Paul, of county of Ramsey, and State of Minnesota, being granted to the Security Trust Company, a Minnesota corporation,

It is ordered, that six months be and the same is hereby allowed from and after the date of this order, in which all persons having claims or demands against the deceased are required to file the same in the probate court of said county, for examination and allowance, or be forever barred.

It is further ordered, that the first Monday in April 1896, at 10 o'clock a. m. at a general term of said probate court to be held at the court-house in the city of St. Paul, in said county, be and the same hereby is appointed as the time and place when and where the said probate court will examine and adjust said claims and demands.

And it is further ordered, that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing this order once in each week for three successive weeks in the St. Paul Dispatch, a daily newspaper printed and published in said county.

Dated at St. Paul, this 3rd day of September, 1895.

By the court,

[L. S.] (Signed) G. WILLRICH,
Judge of Probate.

Said order was published in the same manner and length of time as required by statute for publication of an order limiting time for presenting claims against a deceased person for examination and allowance, it having been published in a legal newspaper in said county on September 10, 17, 24, 1895, and proof of such publication in due form was filed in said court in due season. The administrator duly filed an inventory of the estate of said deceased, and the same was duly appraised. Said defendant as such administrator received and took into its possession assets, funds and property of said estate largely in excess of all claims filed and allowed against said estate in said probate court, and the indebtedness in the complaint herein described, and the expenses of administration.

On March 31, 1896, the administrator filed its final account
17 of its administration, and petition to have the same examined and allowed and for the distribution of the residue of the estate to the persons entitled thereto by law. Said petition was duly verified on March 31st, 1896, and is as follows:

"STATE OF MINNESOTA, } ss:
Ramsey County, }

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

To the judge of probate in and for said county:

The petition of the Security Trust Company as administrator of said estate (*respectively*) represents that it has fully administered said estate and paid all the debts allowed by the court against the estate of said deceased, and the expenses of administration, as will appear by its final account of its administration, and the vouchers therein referred to, and your petitioner would therefore pray that a time and place be fixed for examining and allowing said account, and for the assignment and distribution of the residue of said estate to the parties entitled thereto by law, and that notice thereof be given, agreeably to the statute in such case made and provided and as this court in its discretion may deem proper.

Dated at St. Paul, this 31st day of March, A. D. 1896.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *Pres't.*"

Said court made and entered an order for hearing said petition and notice of such hearing was given as by law required, and proof thereof filed in due season. Said court at the time fixed for such hearing heard the petition and examined said final account and made and entered a final decree distributing all the estate of said deceased in Minnesota to the widow and children of said deceased. The order allowing said final account was as follows:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In the matter of the settlement of the final account of Security Trust Company as administrator of said estate.

Pursuant to the order of this court made and entered in said matter on the 27th day of April, 1896, the account of the Security Trust Company as administrator of said estate came on this day to be examined, and due proof of the publication of the notice of such examination in the matter required by said order of this court, being made and filed herein, and the said administrator appearing
18 by its secretary and treasurer, Charles D. Matteson, and its attorneys Bigelow and Taylor, whereupon the said probate court proceeded to examine the said administrator through its said secretary and treasurer upon oath, and the vouchers and accounts of the said administrator having been duly filed and examined.

And it appearing that the said administrator has accounted for every part of the estate of Sumner W. Matteson, deceased, and that no profit has been made by it of any increase thereof, and the ac-

counts of the said administrator having been finally settled and adjusted, and a summary statement of the same as finally settled allowed and adjusted by this court, being below and herewith recorded; on motion of said administrator by its said attorneys,

Ordered, that the said accounts be and the same are finally settled and allowed, as filed and adjusted in and by this court.

Summary Statement.

In same matter, same term.

The judge of probate of said Ramsey county, makes and records this summary statement of the final account of Security Trust Company as administrator of said estate of Sumner W. Matteson as adjusted, settled and allowed by said probate court.

The debit side of said account.....	$11,981.01
The credit " " " "	11,412.58
Balance due.....	$568.43

[L. S.] (Signed) G. WILLRICH,
Judge of Probate."

The final decree was as follows:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

It appearing to the court now here, on satisfactory proofs and the evidence, that the funeral charges, expenses of last sickness of said deceased and the cost of the administration of said estate have been fully paid and that all debts existing against said deceased, or allowed by the court pursuant to law, have also been fully paid and satisfied, and that said estate has been administered, as by the final account of the Security Trust Company, the administrator of said estate, heretofore duly audited and allowed by this court, pursuant to due notice given and served, will appear, (*preference*) being had thereto:

And it further appearing, that due notice of the application for this final decree in said matter, assigning the estate to the
19 person thereto entitled by law, has likewise been duly given and served pursuant to the law in such case made and provided and decided:

And it further appearing, that said deceased died intestate, and that the residue of said estate consists of the following-described real estate, situate, lying and being in the county of Ramsey and State of Minnesota, to wit: (Here is inserted the description of the real property in Minnesota.)

And it further appearing that the residue of the personal prop-

erty of said estate consists of the following personal property, to wit:

Stocks and Bonds.

Certificate No. 70 for 500 shares of capital stock in the Security Trust Company of St. Paul, Minn.

Certificate 211 for 10 shares of capital stock of First National Bank of Decorah, Iowa.

Certificate No. 5 for 362 shares; certificate No. 34 for 67⅔ and certificate No. 50 for 70⅔ shares of the capital stock of the Duluth Union Land Co., of St. Paul, Minnesota.

Certificates 61 *and* 70 inclusive, for 20 shares each, and bonds Nos 18, 19, 25, 26, 39, 40, 43, 44, 49, 50, 63, 64, 70, 71, 76, 77, 85, 86, 92, 93, 98, 99, 102, 103, 116, 117, of the Iowa and Minnesota Investment Company of Decorah, Iowa.

Certificate 58 for 2,178 shares of the capital stock of the Buffalo Land and Exploration Company of Duluth Minnesota.

Certificate 78 for 25 shares, stock of the Grand Opera House Company of Decorah, Iowa.

Bills Receivable.

Mortgage of Ingborg Casperson, dated —— — secured on lot 10 block 38, original town of Decorah.

Mortgage of M. O. Dalvey, dated June 16, 1893, secured on lot 3, block 2 Matteson's addition to Decorah.

Mortgage of Frank M. Hudges, dated November 15th, 1890, secured on an undivided ⅛ of lot seven block 19 in the original town of Decorah.

Note of W. B. Richard of New York *of New York* city, due Dec. 1st, 1893, for $1,000.

Cash on hand five hundred and sixty-eight dollars and forty-three cents (568.43).

And it further appearing, that the said Sumner W. Matteson left him surviving as his heirs-at-law and entitled to share in his said estate, his wife, Louise M. Matteson and his children, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson and no others,

20 Now therefore, on the petition of the said Security Trust Company as said administrator, and pursuant to due notice and the law in such case provided.

It is ordered, adjudged and decreed, and this court, by virtue of the power and authority vested in the same by law, doth hereby order, adjudge and decree, that all and singular of the above-described real and personal estate, and all other of the estate of the deceased, in the State of Minnesota, be and the same is hereby assigned to and vested in the said Louise M. Matteson, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson, and Claire Louise Matteson, in the following shares and proportions, to wit:

To Louise M. Matteson, one undivided one-third (⅓) of all of said

real and (personal*ty*) property, to Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson, and Claire Louise Matteson, each one undivided ninth (1/9) of all of said real and personal property, without prejudice, however, to any lawful conveyance of said real estate or any part thereof by said persons or any of them.

First. That it was the duly appointed, acting and

ments) and appurtenances thereunto belonging or in anywise appertaining to the above-named persons and their heirs and assigns forever.

By the court.

G. WILLRICH,
Judge of Probate."

[L. S.]

No order or decree has been entered in said probate court discharging the said administrator from its said trust other than the said order allowing its final account and said final decree which are above set out.

Thereafter and on November 23, 1896, said Security Trust Company filed the following petition, which was duly verified on November 20, 1896.

"STATE OF MINNESOTA, } ss.:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

The petition of Security Trust Company, a corporation, respectfully shows to the court:

First. That it was the duly appointed acting and qualified (administ*ered*) of the estate of Sumner W. Matteson, deceased.

Second. That on the 27th day of April, 1896, said court made and entered its final decree in said estate, discharging petitioner as administrator, and assigning the property belonging to said estate to the persons by law entitled to the same.

21 Third. That in drawing said decree certain clerical errors were made, by reason of which certain parcels of real estate were therein erroneously described, and certain other parcels of real estate were omitted therefrom.

Fourth. That the said erroneous descriptions, with the corresponding proper corrections, are as follows:

(Errors and corrections are here set out *in* length in the original petition.)

Fifth. That the parcels and lots of real estate omitted from the said decree as aforesaid are as follows, to wit:

(Here the original petition sets out the particular descriptions of the omitted tracts.)

Wherefore, your petitioner prays that this court make and enter

an order amending and correcting the said final decree by changing the said erroneous descriptions to the proper and correct descriptions, as hereinbefore set forth, and by adding to the said decree the said omitted lots or parcels of real estate.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *President.*"

Thereafter on November 21, 1896, said court made and filed the following order amending said final decree:

"STATE OF MINNESOTA, }
County of Ramsey, } *ss:*

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

On reading and filing the petition of the Security Trust Company in the above-entitled matter, filed therein on the 21st day of November, 1896, and it appearing to my satisfaction, that the said petitioner was the duly appointed, acting and qualified administrator of the estate of Sumner W. Matteson, deceased, and that in drawing the final decrees made and entered in said above-entitled matter, on the 27th day of April, 1896, certain clerical errors were made by reason of which certain parcels of real estate were therein erroneously described and certain parcels of real estate were omitted therefrom, and that the said erroneous descriptions with the corresponding proper corrections are as follows:

(Here the particular errors and corrections are set out.)

And that the said parcels and lots of real estate omitted from the said decree as aforesaid, are as follows, to wit:

The undivided one-eighth (⅛) of the southeast one-quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of section thirty-two (32) township forty-nine (49), range fifteen (15): also lots four (4) five (5) six (6) and ten (10) in block (1) lots five (5) six (6) seven (7) and eight
22 (8) in block three (3): lots eleven (11) and twelve (12) in block fourteen (14) and lot fifteen (15) in block seventeen (17) all of the West End addition to Duluth, according to the recorded plat thereof, of record and on file in the office of the register of deeds in and for said county of St. Louis.

It is ordered, that the said final decree be and the same hereby is amended and corrected by changing the said erroneous descriptions to the correct descriptions, as hereinbefore set forth, and by adding to the said decree the lots and parcels of land omitted therefrom as hereinbefore set forth.

Dated this 21st day of November, A. D. 1896.

G. WILLRICH,
[L. S.] *Judge of Probate.*"

That the major portion of the omitted descriptions were not contained in the inventory filed.

That on or about the — day of November, 1895, said administrator filed in said probate court its petition as follows:

"STATE OF MINNESOTA, }
County of Ramsey, } ss:

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

To the Honorable Gebhard Willrich, judge of the above-named court:

The petition of the Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, respectfully shows to the court:

That it is a duly acting and (qualif*ying*) administrator of the estate of Sumner W. Matteson, deceased; that said Sumner W. Matteson in his lifetime entered into a contract with one James H. Easton, bearing date May 15th, 1894, in which it was recited that said Matteson was indebted to said Easton in the sum of sixteen thousand six hundred and ten dollars and seventy-five cents ($16,610.75), which sum said Matteson therein agreed to pay to said Easton, with interest thereon at eight per cent. (8 per cent.) per annum until paid.

It was further recited therein that said Matteson had, previous to the execution of said contract, executed and delivered to the order of said Easton his certain promissory notes, amounting in the aggregate to the sum of thirty-seven thousand six hundred dollars ($37,600), which notes were delivered for the purpose of aiding and carrying the stock of a certain land (*delivered for the purpose of aiding and carrying the stock of a certain land*) purchase, in which the said Easton and said Matteson together with two other parties,
23 were jointly interested; that by the terms of said contract said Matteson delivered to said Easton, as security for the indebtedness on said contract, fifteen thousand dollars ($15,000) of 5 10 bonds of the Iowa and Minnesota Investment Company of Decorah, Iowa, and twenty-five thousand dollars ($25,000) of the stock of said company, and authorized said Easton to hold said bonds and stocks as security for said Matteson's indebtedness on said contract, and to rehypothecate the same for the purpose of floating the said notes theretofore delivered, and it was further agreed that when the amount due on said contract should be fully paid by said Matteson to said Easton, he would return all such securities and all of the said notes and any renewals thereof duly cancelled.

Your petitioner further alleges that it is informed and believes that said Easton has transferred said notes, in pursuance of said contract, to various innocent holders and has rehypothecated various amounts of said securities to secure their payment, but your petitioner is unable to state the exact amount of said notes which said Easton has so transferred or the amount of such securities so rehypothecated.

That since the execution of said contract there has been paid on account of the sum due thereon the sum of two thousand dollars ($2,000) paid on the 16th day of November, 1894, and the sum of four hundred and seventy dollars and ninety-two cents ($470.92)

paid on the 1st day of August 1895, and no more; and that of the notes so transferred and delivered, as aforesaid, there are now outstanding an amount equal to the sum of thirty-five thousand six hundred dollars ($35,600) and that the said estate of Sumner W. Matteson is liable upon the whole amount thereof. That the holders of the said notes, so outstanding, threaten to file their claim for the full amount against said estate, and to convert the securities now held by them for the payment of said notes; that the said securities are worth much more than the amounts of the notes which they are pledged to secure, and that if the said holders of said notes convert the same, as they threaten to do, and file their claims against the said estate for the balance due on said notes, after so applying the said securities, it will result in great loss and damage to said estate.

Your petitioner further shows that desiring to avoid the sacrifice of any of the said securities and the payment by the said estate of the face value of all of the said notes, as aforesaid, it has entered into an agreement with the said James H. Easton, a copy of which is hereby attached and marked Exhibit "A" and made a part thereof.

That it believes that said Easton is financially able to carry
24 out all of the terms of said agreement, and that it is the best agreement of settlement which could be made with said Easton.

Your petitioner further shows that the inventory value of the said estate amounts to the sum of one hundred and ninety-two thousand two hundred and forty dollars ($192,240). That the amount of unsecured claims and indebtedness against said estate amounts to the sum of eighteen thousand one hundred and nineteen dollars and eighty-six cents ($18,119.86) and no more. That the secured indebtedness against the said estate, save and except the indebtedness evidenced by the notes hereinbefore described, amounts to the sum of thirty-five thousand six hundred and thirty-three dollars and forty cents ($35,633.40). That the last-named indebtedness is amply secured, and the holders thereof will file no claims against the said estate; that the said estate has an amount of cash on hand equal to the sum of ten thousand two hundred and fifty-nine dollars and two cents ($10,259.02) and that all of the funeral expenses and the (espenses) of the last illness of the deceased have been fully paid.

Wherefore, your petitioner prays the order of this court, allowing it to pay over to said Easton, out of the cash in hand belonging to said estate, the sum called for by the terms of Exhibit "A" or if the terms (—) said contract do not meet with the approbation of your honor, that you will direct petitioner how to proceed in this matter.

SECURITY TRUST COMPANY,
As Administrator of the Estate of Sumner W. Matteson,
By EDWARD J. HODGSON, *President,*
By CHAS. D. MATTESON,
Secretary, Petitioner.

Thereupon the said court entered the following order:

"STATE OF MINNESOTA, }
County of Ramsey, } ss:

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

On reading and filing of petition of the Security Trust Company as administrator of the estate of Sumner W. Matteson deceased, asking the authority of this court to pay the secured claim of James H. Easton, without the same being duly filed and approved in the said court against said estate, and it appearing to the court after hearing the evidence and after due consideration thereof that it is for the best interests of the said estate to pay the said claim of the said Easton, according to the terms of the contract set forth in said petition, and that the said contract be duly confirmed by this court, and the said administrator authorized to carry out the terms thereof.

25 Now therefore, said administrator is duly authorized and empowered to proceed and carry out the terms of the said contract with said Easton and to pay over to him forthwith, on his complying with the terms of said contract out of the cash on hand belonging to the said estate, the sum provided to be paid (*he*) said contract, and all further sums provided.

Said administrator is also further authorized to pay all the accruing interest on any and all secured claims against the said estate, whether set forth in the said petition or otherwise, at the times and in the manner provided for the payment thereof; such payments are authorized however, only on condition that said administrator retain sufficient assets with which to pay all the claims which may be filed and proved against said estate.

Dated this 10th day of December, 1895.

[L. S.] G. WILLRICH,
Judge of Probate."

Thereupon the following contract was executed and delivered by it, the same being Exhibit "A" referred to in the foregoing petition:

This agreement, made and entered into this 19th day of November, 1895, by and between James H. Easton party of the first part, and the Security Trust Company as administrator of the estate of Sumner W. Matteson deceased, party of the second part, witnesseth,

Whereas, the said Sumner W. Matteson, deceased, did in his lifetime enter into a contract with said party of the first part on the 15th day of May 1894, in which it was recited that the said Matteson was indebted to the said party of the first part in the sum of sixteen thousand six hundred and ten dollars and seventy-five cents ($16,610.75), *in* which said (sum) said Matteson promised to pay to said party of the first part with eight per cent. (8 per cent.) interest thereon, payable semi-annually and that said Matteson had, from time to time, executed and delivered to the said party of the first part his certain promissory notes of various dates and amounts, and which were in all for the sum of thirty-seven thousand six hundred

dollars ($37,600) which said notes were particularly described in said contract; and in which it was further recited that said notes were delivered to said party of the first part by said Matteson for the purpose of raising money to aid in carrying the stock of a certain land company, referred to in said contract and known as the
Iowa and Minnesota Investment Company of Decorah, Iowa,
26 on which the said party of the first part the said Matteson and others were jointly interested and

Whereas, by the terms of said contract said Matteson (dul*l*) transferred to said party of the first part, as security for the payment of said sum of sixteen (—) six hundred and ten dollars and seventy-five cent- ($16,610.75) certain bonds and stocks of the aforesaid investment company, to wit:

Thirteen thousand dollars ($13,000) in 5/10 bonds of the Iowa and Minnesota Investment Company of Decorah, Iowa, and twenty-five thousand dollars ($25,000) in the stockholders' shares in said investment company, and authorized said party of the first part to rehypothecate the said securities for the purpose of floating and putting in circulation the said notes, and

Whereas, the said party of the first part has endorsed, transferred and placed the said notes, and has pledged and given as security for the payment of the same, various amounts of the said bond- and stocks so that there is now outstanding of the said notes so endorsed, transferred and placed the sum of thirty-five thousand six hundred dollars ($35,600) and

Whereas, since the execution of said contract there has been paid upon the account of the same the sum of two thousand dollars ($2,000), paid on the 16th day of November, 1894, and the sum of four hundred and seventy dollars and ninety-two cents ($470.92) paid on the first day of August, 1895,

Now, therefore, in consideration of the foregoing, and of the sum to be paid, and the mutual covenants and conditions to be performed, as hereinafter set forth, it is hereby mutually stipulated and agreed by and between the said parties of the first and second part-,

First. That the said party of the second part shall pay in hand to the said party of the first part upon account of the sum due under the said contract a sufficient sum of money to reduce the balance remaining due and unpaid thereon to the sum of seven thousand dollars ($7,000) with interest paid in full to January 1st, A. D. 1896, provided, however, that (*if*) the time (*of*) said payment is made the said party of the first part shall call in cancel and deliver up to the said party of the second part, all of the said outstanding notes, except such an amount thereof as shall be equal in their face value in the aggregate to the sum of sixteen thousand dollars ($16,000).

It is further agreed that the said payment shall be made at the
First National Bank of Decorah, Iowa, within ten days after
27 this agreement shall be confirmed by the probate court as hereinafter provided, and at which time said notes shall be cancelled and surrendered.

Second. It is further agreed by and between the parties to this agreement that at the time said payment shall be made and said

notes surrendered and cancelled, as aforesaid, the time for payment of the balance then remaining due upon the said contract, to wit: the sum of seven thousand dollars ($7,000) shall be extended as follows, to wit: one-third (⅓) thereof to be paid on or before January 1st, 1897, one-third (⅓) thereof to be paid on or before July 1st, 1897, and the balance of one-third (⅓) to be paid on or before January 1st, 1898; all of said deferred payments to bear interest at the rate (—) eight per cent. (8 per cent.) per annum, payable semi-annually, from and after January 1st, 1896.

That upon the payment of each of the said deferred installments to become due upon the said contract, as hereinbefore provided, or upon the payment of any part thereof, said party of the first part shall call in, cancel by proper endorsement or deliver up to the said party of the second part, an amount of the said notes then remaining outstanding, equal in their face value in the aggregate to double the amount of the payment which shall then be made.

Third. It is further agreed by and between the parties to this agreement, that upon the full and final payment of the entire sum due upon said contract, as aforesaid, the said party of the first part shall deliver up to the said party of the second part all of the said stocks and bonds, together with such of the said notes as shall then be outstanding.

Fourth. It is further agreed upon the part of the said party of the first part that if the said party of the second part shall make all of the payments upon said contract, as hereinbefore provided, that he will secure such renewals or extension of time for payment of the notes which shall be left outstanding as hereinbefore agreed.

Fifth. It is further agreed by and between the parties to this agreement that the same shall not become operative until the Honorable Gebhard Willrich, judge of probate court of Ramsey county, Minnesota, shall have passed upon this contract, and made an order directing the said party of the second part to carry out the same according to its terms, and said party of the second part agrees to bring said contract before the said probate court with all possible speed.

28 In witness whereof, the said parties of the first and second part- hereunto set their hands and seals this 19th day of November, 1895.

SECURITY TRUST COMPANY,
As Administrator of Sumner W. Matteson's Estate,
By EDWARD J. HODGSON, *Pres't.*
JAMES H. EASTON. [SEAL.]

In presence of—
CARL TAYLOR.
J. V. PARKER.

The following endorsements were subsequently made on said contract:—

"This memorandum and receipt, made this 18th day of February, A. D. 1896, witnesseth:

First. That there has been paid to within-named Easton the sum of $9,159.51 received by him as of date Jan. 1, 1896, leaving a balance thereon remaining unpaid in the sum of $7,000.00 January 1st, 1896.

Second. That there has been cancelled and surrendered to the executors of said S. W. Matteson, deceased, by said Easton, of the notes herein referred to, the sum of $19,600.00, leaving of the notes herein referred to, as remaining outstanding and unpaid the sum of $16,000.

Third. That an endorsement has this day been (*this day*) made on the original contract herein referred to bearing date May 15, 1894, in accordance with the foregoing.

Witness our hand- in duplicate this 18th day of Feb'y, A. D. 1896.

JAMES H. EASTON."

Continuously from and prior to January 1, 1895, said James H. Easton was president and E. R. Baker hereinafter mentioned was cashier of said bank, and actively engaged in the management of its affairs. As early as September 1, 1895, all of the officers and directors of said bank knew of the death of said Sumner W. Matteson and that he died at St. Paul, in the State of Minnesota. The said receiver did not have such knowledge, however, until about December 20, 1896. Some of the creditors of said bank had such knowledge as early as September 1, 1895, and the other creditors of said bank had not such knowledge prior to January 1, 1897. The directors of said bank never at any of their meetings after the death of said Matteson took any action with reference to the said indebtedness of said Sumner W. Matteson, nor with reference to proving the same as a claim against the estate of said Matteson, in Minnesota, and it does not appear from the records of their said meetings that the said indebtedness was mentioned at any such meeting, though other indebtednesses of other persons it appears from said records were considered and acted upon by the directors.

29 Said James H. Easton knew of the pendency of said administration in the said probate court in Ramsey county, Minnesota, from about Nov. 1, 1895.

Said Sumner W. Matteson at his death had a balance of a deposit account, with said bank. On September 6, 1895, said administrator drew its check for said balance and deposited it in the Second National Bank of St. Paul, and it was transmitted for collection through a bank in Chicago but when presented for payment, payment was refused, the check was protested for non-payment and returned with a certificate of protest. Said check and certificate of protest so returned were as follows:

(*Check.*)

ST. PAUL, MINN., *Sep.* 6, 1895.

First national bank, Decorah, Iowa,

Pay to F. D. Montfort cashier, or bearer $170.92 four hundred seventy and $\frac{92}{100}$ dollars, in current funds.

SECURITY TRUST COMPANY,
As Administrator of Sumner W. Matteson Estate,
By CHAS. D. MATTESON,
Treas. pro Tem.

Endorsed across the face of said check in red ink was the following:

"Protested for non-payment Sept. 10, '95. Otto O. Arnison, N. P."

Among the endorsements on back of said check was the following:

"For deposit to credit of Security Trust Company. S. W. Matteson, treas."

(*Protest.*)

"THE UNITED STATES OF AMERICA, }
State of Iowa, Winneshiek County. }

To all whom the same doth or may in anywise concern:

Know ye, that I, Otto O. Arnison, a notary public in and for the county and State aforesaid, commissioned under the great seal of said State, and duly qualified and sworn, and residing in the town of Decorah, in said county, on the tenth day of September, 1895, at the request of the First National Bank of Decorah, Iowa, did present the original check hereunto annexed to the First National Bank of Decorah, Iowa, and demanded payment of the same, which was refused,

Whereupon, I, the said notary public, at the request aforesaid, did protest and by these presents solemnly and publicly protest, as well against the drawer and endorsers of the said check as against all others whom it doth or may concern, for exchange and all costs, damage, and interest already incurred and to be hereafter incurred for want of pay't of the same.

And further certify that on the 10 day of Sept., 1895, due notice of the presentment and protest, signed by me, was given by me to the drawer and endorsers of the said check by depositing in the post-office at Decorah, Iowa, prepaying the postage thereon, directed as follows:

Security Trust Company, adm'r, St. Paul, Minn.

F. D. Montfort, cas., or D. A. Montfort, pres't, St. Paul, Minn.

John B. Meyer, cash., Chicago.

Each of the above-named places being the reputed place of residence of the person to whom notice was so addressed, and the post-office nearest thereto.

This done and protested in the town of Decorah, aforesaid, the day and year above written. *In testimonium veritatis.*

OTTO O. ARNISON.

[SEAL.] *Notary Public.*

Indorsed: Certificate of protest. Security Trust Company, adm'r. Check on First national bank, Decorah, Iowa. Protest fees waived. Otto O. Arnison, notary public, Decorah, Iowa.

The following notice of protest was also sent to said administrator:

"First National Bank of Decorah.

$470.92. DECORAH, IOWA, *Sept.* 10, 1895.

SIR: Please take notice that a check dated September 6, 1895, for four hundred seventy and $\frac{92}{100}$ dollars payable at — drawn by Security Trust Company, adm'r, in favor of F. D. Monfort, cas., drawn on First national bank, Decorah, made by —— —— and — by you was this day protested for non-payment, the same having been duly presented and payment demanded, which was refused. The holder thereof looks to you for payment.

Yours respectfully, OTTO O. ARNISON,

[NOTARIAL SEAL.] *Notary Public.*

To Security Trust Company, adm'r S. W. Matteson's estate, St. Paul, Minn."

On February 18, 1896, a payment of eight hundred dollars ($800) was made to said bank and a receipt therefor given signed by said Baker as cashier, which receipt and the endorsement thereon is as follows:

31 First National Bank of Decorah, Iowa.

DECORAH, IOWA, *Feb'y* 18, *A. D.* 1896.

Received from the Security Trust Company of St. Paul, Minn., as administrator of S. W. Matteson, deceased, by J. H. Easton, eight hundred dollars, which said sum had been this day endorsed on a note of No. 29144 of said S. W. Matteson held by this bank, dated Oct. 19, '94, due in six months payable to the order of said Matteson and endorsed by him to this bank.

$800. E. R. BAKER, *Cas.*

Endorsed on back of said receipt was the following:

"Note memo. made 2, 18, '96.—The within-mentioned payment is made to apply in part satisfaction of contract made Nov. 19, '95 by and between the executors of said S. W. Matteson's estate and the within-mentioned Jas. H. Easton.

Witness my hand.

JAMES H. EASTON."

No steps were ever taken by said bank (*or by said bank*), or by any one in its behalf to file its claim in the said probate court, nor

to commence any action in any State or United States court in the State of Minnesota, to prove its claim as against the deceased or to recover on account of any of said notes until January 22, 1897, when it commenced this action.

Said receiver caused said notes to be presented to Security Trust Company in January, 1897, before the commencement of this action, and demanded that it pay the same out of the estate of said deceased, and payment was refused. No part of said notes has been paid except as alleged in the petition or declaration. Said administrator as early as Sept. 15, 1895, knew that said bank held said notes and that they were unpaid.

The Security Trust Company did not at any time make any written assignment or transfer of any of the property, described in said final decree to any person named as a distributee in said final decree, except the certificate of stock of the Duluth Union Land Co. described in said decree of distribution, which said stock was on the 23rd day of December, 1896, assigned in writing by said administrator. Such assignment was on December 23, 1896, made on the back of said certificate and signed "Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased," at the request of said Chas. D. Matteson for the reason that when said Matteson presented said certificate to the secretary of said Duluth Union Land Co. and requested that certificates in lieu thereof should be issued to the distributees named in said final decree said secretary refused to make such transfer unless such assignment should be endorsed on said stock.

32 But within a few days after said final decree had been made and long before December 1, 1896, said Charles D. Matteson, who was secretary and treasurer of Security Trust Company, at all times herein mentioned, and also one of the distributees named in said final decree, removed all securities and papers in possession of said Security Trust Company as such administrator from the files of said Security Trust Company where they had been kept by it as such administrator, and placed them in a box or receptacle which he kept, and for a long time before that time had kept in the vault of said company for his personal papers, and papers in his personal possession, except certain stocks and securities which Security Trust Company as collateral security for indebtedness owed to it by said Sumner W. Matteson held prior to his death, and which it has continued to hold as such collateral to the present time, such indebtedness still remaining unpaid. The book in which Security Trust Company kept entries of the proceedings in the probate of said estate, was in the usual course of business, shortly after the entry of said final decree, and long before December 1, 1896, written up, and the following entries made after the printed words on the page of said book containing entries relative to said estate viz:

Application for discharge (in print). March 31, 1896, (in writing.) Discharged (in print) April 27, 1896, (in writing.)

Red-ink lines followed on the page so ruled as to leave no space for further entries on said page.

The cash on hand at the time of filing the final account was paid

out by Security Trust Company under the directions from said Chas. D. Matteson for taxes and other expenses relating to property of said distributees, and early in June, 1896, it paid to said Chas. D. Matteson by its check, a balance of less than fifty dollars which remained unexpended according to the account kept on its books in which account was entered the moneys it had received and disbursed as such administrator, and said account was then closed on its books. All such properties thereafter remained in the said private receptacle of said Chas. D. Matteson, except as he may have delivered them to persons other than the Security Trust Company, and written assignments or conveyances of all the said property (except certificates of capital stock of First National Bank of Decorah) were made by the distributees to the Matteson estate incorporated (a corporation organized under the laws of Minnesota) prior to Dec. 15, 1896. Said Chas. D. Matteson was secretary and treasurer of said Matteson estate, incorporated, at all times after April 26, 1896.

On April 6, 1896, Warner, Richardson & Lawrence filed in said probate court their duly verified claim against said estate for
33 one hundred nine and 20/100 dollars ($109.20) on which is endorsed in handwriting of said Chas. D. Matteson the following: "We allow the within claim this 20th day of May, '96. Security Trust Company, by Chas. D. Matteson, sec'y;" and it was paid in full.

Edward J. Hodgson and Chas. D. Matteson were respectively president and secretary and treasurer of said Security Trust Company at all times herein mentioned and they had exclusive supervision and management of said administration for said company, but said Chas. D. Matteson principally attended to all the details thereof.

Said deceased resided in the State of Iowa until November, 1891, and from that date until his death at St. Paul, Minnesota.

Said Chas. D. Matteson was appointed administrator of the estate in Iowa by said Iowa court above mentioned in September, 1895.

STRINGER & SEYMOUR,
Plaintiff's Attorneys.
EDMUND S. DURMENT,
Attorney for Defendant.

Stipulation of facts. Filed, Jan. 18th, 1899. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on the 5th day of January, 1897, the following stipulation placing cause on calendar was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Defendant.

It is hereby stipulated that the above-entitled cause be placed on the calendar for the January A. D. 1899 term of said court, without further notice.

STRINGER & SEYMOUR,
Attorneys for Plaintiff.
EDMUND S. DURMENT,
Attorney for Defendant.

Stipulation. Filed January 5, 1899. Henry D. Lang, clerk.

34 Thereafter and on the 17th day of April, 1899, the following findings and order for judgment was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased.

This case being regularly on the docket, came on for hearing at the January A. D. 1899 term of this court holden at St. Paul, in said third division of said district, and trial by jury having been duly waived by respective parties it was tried by the court without a jury on Wednesday, April 5, 1899, in said term; the plaintiff appearing by Stringer and Seymour, his attorneys, and the defendant by Edmund S. Durment, its attorney. And now having heard the arguments of counsel for the respective parties, and duly considered the pleadings and the stipulation of facts presented and received in evidence, it is found by the court that the plaintiff, as receiver of the First National Bank of Decorah, Iowa, is entitled to recover of the defendant The Security Trust Company of St. Paul, as administrator of the estate of Summer W. Matteson, deceased, the amount claimed by said plaintiff in his complaint herein with costs, to be paid and enforced out of the property and effects of the intestate Summer W. Matteson, deceased; said judgment to be duly certified by this court to the probate court of Ramsey county, Minnesota, as a claim duly proved, established and allowed against the said estate of Summer W. Matteson, deceased.

The clerk will from said complaint compute the amount which

the plaintiff is, at the date hereof, entitled to recover under the finding, and enter judgment accordingly.

WM. LOCHREN, *Judge*.

April 15, 1899.

Findings and order for judgment. Filed, April 17, 1899. Henry D. Lang, clerk.

Thereafter and on the 17th day of April the following stipulation as to costs was filed in the clerk's office of said court in words and figures following, to wit:

35 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa, Plaintiff,

vs.

THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Defendant.

Plaintiff's Costs and Disbursements.

Docket fee	$10.00
U. S. marshal's fee	2.06
Clerk's fee, to be added, plaintiff's fees	11.95
	$24.01

It is hereby stipulated and agreed that the foregoing costs may be taxed and allowed by the clerk of said court and inserted in the judgment in the above-entitled cause, without further notice.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorneys for Plaintiff.

Stipulation on costs. Filed April 17th, 1899. Henry D. Lang, clerk.

And thereafter, on the same day, the following order was entered of record in said cause, judgment for plaintiff, in words and figures following, to wit:

United States Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1899.

APRIL 17TH, 1899.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased.
E. Law. 1164.

This cause having been heretofore tried by the court without a jury and the court having this day filed its findings,

Therefore it is considered, ordered and adjudged in accordance therewith that the plaintiff herein, William H. Dent, as receiver of the First National Bank of Decorah, Iowa, do have and recover of and from the defendant The Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, the sum of thirteen thousand five hundred eleven dollars and
36 five cents ($13,511.05) the amount claimed in the complaint with interest to this date, together with the sum of twenty-four dollars and one cent ($24.01) the costs which the plaintiff is entitled to recover in this action in accordance with the stipulation duly signed by the attorneys for the respective parties herein and this day filed, amounting in the aggregate to the sum of thirteen thousand five hundred and thirty-five dollars and six cents ($13,535.06) and that said sum be paid and enforced out of the property and effects of the intestate Sumner W. Matteson, deceased.

Ordered further that this judgment be duly certified by this court to the probate court of Ramsey county as a claim duly approved, established and allowed against the estate of Sumner W. Matteson, deceased.

Judgment-roll signed this 17th day of April, A. D. 1899.

Damages	$13,511.05
Costs	24.01
Total	$13,535.06

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

Judgment-roll. Filed April 17, 1899. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on October 14th, 1899, the following assignment of errors was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Defendant.

The defendant in the above-entitled action says that in the record and proceedings in said action, and also in the rendering of the judgment therein there is manifest error in the particulars hereinafter specified, and assigns as error committed by the court in the trial of said cause for which it asks a reversal on error, the following:

1. The court erred in granting judgment in favor of the petitioner on the pleadings and the agreed facts stipulated by the parties and spread upon the records.

2. The court erred in not ordering judgment on the pleadings and agreed facts stipulated by the parties and spread upon the records in favor of the defendant.

37 3. The judgment is not supported by the facts so stipulated and agreed upon in writing and filed and spread upon the records in said action.

4. The pleadings and the facts therein set forth and the agreed facts stipulated and filed in said action and spread upon the records (upon which said judgment is based) are not sufficient to authorize the entry of said judgment or to support the judgment so rendered and entered.

5. The agreed facts stipulated in writing and filed in said action and spread upon the records are not sufficient to authorize the entry of said judgment or to support the said judgment so rendered and entered.

Wherefore the said defendant, the plaintiff in error, prays that said judgment be reversed.

EDMUND S. DURMENT,
Attorney for Defendant, Plaintiff in Error.

Indorsed: Assignment of errors. Filed October 14th, 1899. Henry D. Lang, clerk.

And on the same day, the following bond on appeal was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Know all men by these presents, that we, Security Trust Company, defendant in the above-entitled action, as principal, and C. E. Dickerman and Chas. D. Matteson as sureties, are held and firmly bound unto William H. Dent, as receiver of the First National Bank of Decorah, the plaintiff in the above-entitled action, in the sum of three hundred dollars lawful money of the United States to be paid unto the said plaintiff, his successors in office, or assigns, for which payment well and truly to be made we jointly and severally bind ourselves and the successors of the Security Trust Company, and the heirs, executors and administrators of the said sureties firmly by these presents.

Sealed with our seals and dated this 14th day of October, A. D. 1899.

The condition of this obligation is such, that whereas a final
38 judgment was rendered and entered in the above-entitled action in favor of the plaintiff and against the said defendant on the 17th day of April, 1899, and the said defendant has duly made an assignment (*or*) errors and is about to apply for a writ of error to issue in said court in order that said judgment and the records and proceedings in said suit may be reviewed and examined in the United States circuit court of appeals for the eighth judicial circuit:

Now, therefore, if said writ of error shall be allowed and said defendant shall prosecute its writ to effect, and if it fail to make its plea good shall answer all costs, then this obligation shall be void, otherwise of force.

In witness whereof the said defendant has caused this bond to be executed in its corporate name and its corporate seal to be thereto affixed, and the said sureties have thereto set their hands and seals this 14th day of October, A. D. 1899.

SECURITY TRUST COMPANY.
By EDWARD J. HODGSON, *President*,
By CHAS. D. MATTESON, *Secretary*.
C. E. DICKERSON. [SEAL.]
CHAS. D. MATTESON. [SEAL.]

Signed and sealed in presence of
W. J. DESMOND.
H. A. PRESLER.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 14th day of October, A. D. 1899, came (*on*) before me personally Edward J. Hodgson, president, and Charles D. Matteson, secretary of said Security Trust Company, to me well known and who being by me severally duly sworn on oath says, that he, the said Edward J. Hodgson, is the president and he, the said Charles D. Matteson, is the secretary, of said Security Trust Company, a corporation, and that the foregoing bond was executed by said Security Trust Company by authority of its board of directors, and that the seal thereto attached is the corporate seal of said corporation, and each acknowledged the same to be the free act and deed of said corporation.

And at the same time and place before me personally appeared C. E. Dickerson and Chas. D. Matteson, two of the persons who executed the foregoing bond as sureties thereon, to me personally known to be the same persons described in and who executed the foregoing bond as sureties, and each severally acknowledged the same to be his own free act and deed.

39 Witness my hand and official seal this 14th day of October, A. D. 1899.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minn.

Bond on appeal.

I hereby approve of the within bond and the sureties thereon. Dated October 14th, 1899.

WALTER H. SANBORN,
Circuit Judge.

Filed October 14th, 1899.

HENRY D. LANG, *Clerk.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

C. E. Dickerson and Chas. D. Matteson, came before me personally on this 14th day of October, A. D. 1899, and being severally and duly sworn each for himself doth depose and say, that he is the surety above named, and a resident and freeholder of the State of Minnesota, and worth the sum of six hundred dollars ($600) over and above his debts and liabilities, and exclusive of his property exempt by law from execution.

C. E. DICKERSON.
CHAS. D. MATTESON.

Subscribed and sworn to before me on this 14th day of October, A. D. 1899.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minn.

And on the same day the following petition for writ of error was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Now comes the defendant above named and says, that on the 17th day of April, 1899, the above-entitled court entered judgment in the above-entitled action in favor of the plaintiff against the defendant, which judgment was on the merits and is a final judgment, and in which judgment and proceedings prior thereto in said action, certain errors were committed to the prejudice of the said defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the said defendant prays that a writ of error may issue in this behalf to the United States circuit court of appeals for the eighth circuit for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in said cause, duly authenticated, may be sent to said circuit court of appeals.

EDMUND S. DURMENT,
Attorney for Defendant.

Writ of error is allowed as prayed for in the foregoing petition, on the 14th day of October, 1899.

WALTER H. SANBORN,
Circuit Judge for the United States Circuit Court for the District of Minnesota, Third Division.

Petition for writ of error. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter and on the same day the following writ of error was issued in said cause, to wit:

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Minnesota, third division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the January term, 1899, thereof, between William H. Dent, as receiver of the First National Bank of Decorah, plaintiff, and Security Trust Company of St. Paul as administrator of the estate of Sumner W. Matteson, deceased, defendant, a manifest error hath happened, to the great damage of the said Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson deceased, as — its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 12th day of December, A. D. 1899, to the end that the record and proceedings aforesaid, being inspected, the United States circuit court of appeals may cause further to be done therein to cor-
41 rect that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourteenth day of October, A. D. 1899. Issued at office in St. Paul, Minnesota, with the seal of the circuit court of the United States for the district of Minnesota, third division.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Allowed by
WALTER H. SANBORN, *Judge.*

UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within-entitled cause, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the circuit court of the United States for the district of Minnesota, third division.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for District of Minnesota.

Entered 1164. E. law. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter and on the same day the following citation was issued and returned on the 16th day of October, 1899, with due proof of service thereon, to wit:

The United States of America to William H. Dent, as receiver of the First National Bank of Decorah:

You are hereby cited and admonished to appear in the United States circuit court of appeals for the eighth circuit at the city of St.

Louis, Missouri, on the 12th day of December, A. D. 1899, pursuant to a writ of error filed in the office of the clerk of the United States circuit court for the district of Minnesota, third division, wherein Security Trust Company (defendant in an action brought by you against Security Trust Company, as administrator of the
42 estate of Sumner W. Matteson, deceased), is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said circuit court, this 14th day of October, A. D. 1899.

WALTER H. SANBORN,
Judge of United States Circuit Court,
Eighth Judicial Circuit.

Entered 1164 E. law. United States circuit court, district of Minnesota. Third division. William H. Dent, as receiver, etc., petitioner, *vs.* Security Trust Company, as administrator, etc., defendant. Citation. Due service of within citation is hereby admitted Oct. 16 1899. Stringer & Seymour, Edward C. Stringer, McNeil V. Seymour, attorneys for plaintiff. Filed October 16th, 1899. Henry D. Lang, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable, the United States circuit court of appeals for eighth circuit, that the foregoing, consisting of 69 pages, numbered consecutively from 1 to 69, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of November, A. D. 1899.

HENRY D. LANG, *Clerk.*

(Cancelled 10c. U. S. rev. stamp.)

Filed Nov. 16, 1899.

JOHN D. JORDAN, *Clerk.*

43 (*Appearance for Plaintiff in Error.*)

And on the sixteenth day of November, A. D. 1899, an appearance of counsel for plaintiff in error was filed in the clerk's office of

said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah.
} No. 1355.

The clerk will enter our appearance as counsel for the plaintiff in error.

EDMUND S. DURMENT.
ALBERT R. MOORE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1355. The Security Trust Co., as adm. of the estate of Sumner W. Matteson, dec., pl'ff in error, *vs.* William H. Dent, as rec'r of the First National Bank of Decorah. Appearance. Filed Nov. 16, 1899. John D. Jordan, clerk. Edmund S. Durment, Albert R. Moore, counsel for plaintiff in error.

(*Appearance for Defendant in Error.*)

And on the sixth day of February, A. D. 1900, an appearance of counsel for the defendant in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
WILLIAM H. DENT, Receiver, etc.
} No. 1355.

44 The clerk will enter my appearance as counsel for the defendant in error.

EDWARD C. STRINGER.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1900. No. 1355. Security Trust Company, as administrator, etc., plaintiff in error, *vs.* William H. Dent, receiver, etc. Appearance. Filed Feb. 6, 1900. John D. Jordan, clerk. Edward C. Stringer, counsel for def't in error.

(*Order of Submission.*)

And on the fourteenth day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

MONDAY, *May* 14, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver, etc. } No. 1355.

In error to the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. E. S. Durment for plaintiff in error, continued by Mr. E. C. Stringer for defendant in error and concluded by Mr. E. S. Durment for plaintiff in error.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the seventeenth day of October, A. D. 1900, an opinion of said United States circuit court of appeals was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

45 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1900.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Defendant in Error. } No. 1355. In Error to the Circuit Court of the United States for the District of Minnesota.

Mr. Edmund S. Durment (Mr. Albert R. Moore was with him on the brief) for the plaintiff in error.

Mr. Edward C. Stringer (Mr. McNeil V. Seymour was with him on the brief) for the defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

This action was brought by William H. Dent, as receiver of the First National Bank of Decorah, to recover from The Security Trust Company, as administrator of the estate of Sumner W. Matteson,

deceased, the plaintiff in error, the amount which was alleged to be due to the receiver on five promissory notes executed by S. W. Matteson in his lifetime, which became the property of the First National Bank of Decorah, Iowa, before their maturity. Four of the notes were executed on April 15, 1895, and one of them on October 19, 1894. Two of the notes had matured prior to Matteson's death, which occurred on July 22, 1895. The remaining three notes matured prior to October 15, 1895, or within less than three months after Matteson's death. As a defense to all of the notes Matteson's administrator pleaded, in substance, that it had fully administered upon Matteson's estate and had been discharged as administrator; that during the course of the administration the notes sued upon had not been presented or allowed against the estate of the deceased and that the action was barred by force of the statutes of the State of Minnesota, where the administration proceedings had taken place. The case was submitted to the trial court upon an agreed statement of facts, from which we cull the following, which are all that are deemed material: Sumner W. Matteson was a resident and citizen of the State of Minnesota from some time prior to January 1, 1894, until his death, and during that time resided at the city of St. Paul, in
46 Ramsey county, Minnesota, where he died on July 22, 1895.

The Security Trust Company was appointed administrator of Matteson's estate and duly qualified and entered upon its duties as such administrator on September 3, 1895. On the same day the probate court of Ramsey county, Minnesota, by which the appointment was made, ordered that six months be allowed from and after the date of the order in which persons having claims against the deceased should file the same in the probate court for examination and allowance or be forever barred; that the first Monday of April, 1896, at a general term of the court to be held at the court-house in the city of St. Paul, be appointed as the time and place when and where the court would examine and adjust claims and demands against the estate of the decedent, and that notice of the hearing be given to all persons interested by publishing the order in question once each week for three successive weeks in a daily newspaper published at St. Paul, in the county of Ramsey, State of Minnesota. Said order was afterwards published in the manner prescribed by the order on September 10, 17 and 24, 1895, and proof of such publication was duly filed. As administrator the Security Trust Company took possession of the assets of the decedent's estate and proceeded to administer upon them in the mode prescribed by law. On March 31, 1896, it filed an account of its administration and its petition to have the same examined and allowed and for the distribution of the residue of the estate to the persons entitled thereto. The court thereupon made an order for the hearing of the petition and notice of the hearing was given, as required by law, and proof of such notice was filed in due season. On April 27, 1896, the probate court examined the account and upon such examination approved of the same and ordered that the account be finally settled and allowed. It further ordered and adjudged, in substance, that all of the real and personal property of the estate which appeared

by the account to be in the administrator's hands be assigned to and vested in the heirs-at-law, who were named in the order. On November 21, 1896, the probate court entertained a petition for an order amending and correcting its final decree by changing the description of some of the property referred to therein and adding a description of some property that had been omitted, and in accordance with the prayer of the petition made an order making the desired alterations in the decree. No order was ever made by the probate court of Ramsey county discharging Matteson's administrator from its trust other than the order heretofore mentioned allowing its final account and directing a distribution of the assets in its hands. The Security Trust Company, as administrator, did not at any time make an assignment or transfer of the decedent's property to the distributees designated in the order of distribution, except in the manner following: Within a few days after said decree had been made Charles D. Matteson, who was its secretary and treasurer, took all the securities and papers in the possession of the Security Trust Company, as administrator, and placed them in a box or receptacle which he kept, and for a long time previous had kept, in the vaults of the said company. On December 23, 1896, it also executed an assignment of one certificate of stock in a land company, which belonged to the estate, to enable the distributees to obtain another certificate in lieu thereof. Other stocks and securities, belonging to the estate, which the trust company held as col-
47 lateral security for an indebtedness due to it by the deceased at the time of his death, it continued to retain in its possession undistributed, and it still retained the same at the time of the trial below.

As early as September 1, 1895, all of the officers and directors of the National Bank of Decorah had notice of the death of said Matteson and that he died at St. Paul in the State of Minnesota, and as early as November 1, 1895, the president of said bank, it being then a going concern, had knowledge that Matteson's estate was undergoing administration in the probate court of Ramsey county, State of Minnesota. The receiver of said bank, who was appointed on November 24, 1896, did not have knowledge of Matteson's death and that his estate was undergoing administration until about December 20, 1896.

During the pendency of the administration proceedings neither the National Bank of Decorah nor any one in its behalf filed a claim against the estate in the probate court of Ramsey county based upon the notes in controversy and no action was brought thereon in any court until the present action was instituted in the circuit court of the United States for the district of Minnesota, which action was commenced by the receiver on January 22, 1897.

The General Statutes of the State of Minnesota for the year 1894 contain the following provisions with respect to the administration of estates:

"SECTION 4509. At the time of granting letters testamentary or of administration, the court shall make an order limiting the time in which creditors may present claims against the deceased for exami-

nation and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons against deceased. No claim or demand shall be received after expiration of the time so limited, unless for good cause shown the court may in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed unless presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate; * * *.

"SECTION 4510. The order prescribed in section (4509) shall be published according to law, and shall be notice to all creditors and persons interested.

"SECTION 4511. All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counter-claim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim.

48 "SECTION 4514. No action at law for the recovery of money only shall be brought in any of the courts of this State against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: Provided that this provision shall not be construed as affecting any lien existing at the date of such death. Provided further, that said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who died prior as well as to those who may die after adoption of this code.

"SECTION 4517. Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets if any."

"SECTION 4523. The probate court at the time of granting letters testamentary or of administration, shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

On the foregoing statement of facts the trial court rendered a judgment in favor of the receiver and against Matteson's administrator for the sum of $13,535.06, including costs, to reverse which the present writ of error was brought.

THAYER, circuit judge, after stating the case as above, delivered the opinion of the court:

From the foregoing statement it will be observed that the present action against the administrator of S. W. Matteson to recover a judgment on the notes executed by him in his lifetime, was not brought until after the expiration of the six months limited by the order of the probate court of Ramsey county, Minnesota, for the filing, examination and allowance of claims against Matteson's estate nor until after the examination and allowance of the administrator's final account. It is accordingly contended in behalf of the administrator that by virtue of sections 4509 and 4511 of the Minnesota statutes heretofore quoted, the right to a judgment on the notes in controversy was forever barred, although they were owned by a non-resident of the State and a recovery was sought in the Federal court. This contention raises the principal question that we are called upon to consider and determine.

By reference to the aforesaid sections of the Minnesota statute it will be observed that the several probate courts of that State have been vested with the power to determine for what period of time the creditors of a deceased person whose estate is undergoing administration therein shall be given an opportunity to establish their demands against the estate, the only limitation upon that power being that the time granted shall not be less than six months nor more than eighteen months. In the first instance it seems that they cannot allow more than one year for the establishment of demands but for cause shown, which they deem adequate, they may audit and allow claims within eighteen months from the date of the original order fixing the
49 period for allowance, and before a final settlement. It is furthermore manifest that the local administration law was framed with a view of requiring all demands against the estates of decedents to be established in the local probate courts, and not elsewhere, since section 4509 directs those courts to make an order fixing the time and place when they will examine and adjust claims and demands of all persons against the deceased, and section 4511 declares that all claims arising upon contracts "must be presented to the probate court within the time limited in said order" and that any claim not thus presented is barred forever. Moreover, section 4514 declares that "no action at law for the recovery of money only shall be brought in any of the courts of this State against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court, except as provided in this code." In some States the administration laws provide, in substance, that the commencement of a suit in any court, State or Federal, against an administrator or executor to establish a demand against a decedent, shall be deemed the lawful exhibition of the demand from the time process is served, and that if such an action is insti-

tuted within a certain period after the administrator or executor gives notice of his appointment or files his bond, the judgment eventually recovered in such action shall be entitled to payment out of the assets of the estate in the administrator's hands. General Statutes of Mo., 1889, secs. 184 to 186, both inclusive; Sandels & Hill's Digest of the Laws of Ark., secs. 109 to 112, both inclusive; General Statutes of Kan., 1889, sec. 2890; Mills Annotated Statutes of Colo., sec. 4792. The administration law of the State of Minnesota contains no similar provisions, but plainly requires all creditors, whether domestic or non-resident, to file such demands as they may have against the estate of a decedent in the appropriate probate court within such period not less than six nor more than eighteen months as it may see fit to grant, and to prosecute them to judgment in that court or else be barred of the right of recovery.

It is well settled by repeated adjudications that a foreign creditor may establish his debt in the courts of the United States against the personal representative of a decedent, notwithstanding the fact that the laws of the State relative to the administration and settlement of decedents' estates do in terms limit the right to establish such demands to a proceeding in the probate courts of the State. Union Bank of Tenn. *v.* Jolly's Adm'r, 18 How., 503, 507; Green's Adm'x *v.* Creighton *et al.*, 23 How., 90, 107, 108; Suydam *v.* Broadnax, 14 Pet., 67. This is but another form of saying that no State legislature can deprive the Federal courts sitting therein of a jurisdiction which is vested in them by the Constitution and laws of the United States. It follows, of course, that in so far as the administration law of the State of Minnesota attempts to compel citizens of other States to establish demands against the estates of decedents, by a proceeding in the probate court of the State, it is ineffectual to accomplish that object.

It is said, however, that although the statute in question may be ineffectual to compel non-resident creditors to submit their demands to the appropriate probate court for allowance, yet as a statute of limitations it should be given effect to prevent the establishment of a demand in the Federal court of the State after such lapse of time that it cannot be established in the probate court. The vice of this argument as applied to the case in hand consists in the fact
50 that the legislature of the State of Minnesota has not undertaken to bar any claim against a decedent's estate, absolutely, until after the lapse of eighteen months from the date of the order fixing the period of allowance, and in the case at bar that period had not expired when the action was commenced, to wit: on January 22, 1897. It is true that section 4509, when conferring the discretionary power to allow claims within eighteen months, imposes the limitation that they shall be allowed "before final settlement," and it is also true that the final account of Matteson's administrator had been submitted to and approved by the probate court before this action was commenced. But it must be borne in mind that the administration law, section 4523, *supra*, confers upon the probate court the power to determine when the final settlement of an estate shall be made and to allow as much as one year and six months for that purpose. We

think that the Federal court must be conceded the same power, as respects the claim of a non-resident creditor, to allow it within eighteen months, which is conferred upon the probate courts of the State; and we are furthermore of the opinion that the right of a non-resident creditor to sue for the establishment of his demand in the Federal court cannot be made to depend on the length of time that the probate court happens to allow for making a final settlement. If the Federal court gives effect to laws limiting the period for establishing claims in the probate courts of the State, which differ essentially from the general statute of limitations, it should only be required to apply the absolute bar arising from lapse of time which the legislature has erected. There is much reason, perhaps, for saying that citizens of other States ought not to be allowed to maintain an action in the Federal court against a local administrator or executor after the expiration of a period when by the express command of the legislature no such action can be maintained in the local courts, provided the period fixed by the legislature is reasonable; but the right of a non-resident creditor to bring his action in the national courts ought not to be conditioned or made to depend upon the time that a local court chances to approve a final settlement when the time of such approval rests in its discretion and is largely a matter of convenience.

For these reasons we conclude that the case in hand, the same having been brought within less than eighteen months after the order fixing the period for the allowance of claims was made—was lawfully entertained by the trial court.

Another claim which is interposed by the administrator as a defense to his action is, that the approval of its final account and the order of distribution made thereon by the probate court on April 27, 1896, closed the administration and operated without more as a discharge of the administrator, so that there was in point of fact no administrator when the suit at bar was instituted. This view evidently was not entertained by the probate court by which the administrator was appointed, since the record discloses that that court as late as November 21, 1896, entertained a petition on the part of the administrator and at its instance made an order founded thereon by which the decree of April 27, 1896, was amended and corrected in important respects. It is manifest that the probate court acted upon the theory that it had not lost jurisdiction over the administrator; that it was still subject to its orders as to all matters pertaining to the estate and would remain so until it had fully executed its decree and was formally discharged as administrator by an order made to that
51 effect. And this assumption on which the probate court appears to have acted, in our opinion, was entirely correct. The order of distribution that was made on April 27, 1896, required certain acts to be done and performed by the trust company in its capacity as administrator, and until they had been done and performed and the court had approved of the administrator's acts in that behalf it was clearly subject to the orders of the probate court and its functions as administrator had not ceased. The view contended for by the administrator is entirely untenable since it would

deny to the probate courts of the State the right to enforce such orders relative to the distribution of estates as they may see fit to make, leaving administrators, when final settlements are approved, in full possession of all the property then in their hands and at liberty to deal with it as they please until they are called to account by some other tribunal than that from which they originally derived their authority. We are satisfied, therefore, that under the laws of the State of Minnesota the approval of a final settlement and an order of distribution made thereon does not operate forthwith to discharge the administrator, but that its effect is to give the distributees a right to the possession of the property that has been assigned to them and a right to invoke the power of the probate court as against the administrator to compel obedience to its orders.

Finding no error in the record, the judgment below is accordingly affirmed.

SANBORN, circuit judge, concurring:

I concur in the judgment in this case for the reasons stated in the opinion of the court and for the further reason that creditors, heirs, and legatees who are citizens of other States are not deprived of their right to maintain and try their suits in the Federal courts against administrators, executors and all other parties who are citizens of the State of the decedent, nor are they barred of their original rights to maintain and to try these suits in the Federal courts by their failure to present their claims to the State courts as provided by the administration statutes of the States. Suydam *v.* Broadnax, 14 Pet. 67, 74, 10 L. ed. 357; Bank *v.* Vaiden, 18 How. 503, 507, 15 L. ed. 472; Borer *v.* Chapman, 119 U. S. 587, 588, 589, 7 Sup. Ct. 342, 30 L. ed. 532; Lawrence *v.* Nelson, 143 U. S. 215, 224, 12 Sup. Ct. 440, 36 L. ed. 130; Payne *v.* Hook, 7 Wall. 425, 430, 19 L. ed. 260; Arrowsmith *v.* Gleason, 129 U. S. 86, 98, 9 Sup. Ct. 237, 32 L. ed. 630; Johnson *v.* Waters, 111 U. S. 640, 667, 4 Sup. Ct. 619, 28 L. ed. 547; Hayes *v.* Pratt, 147 U. S. 557, 570, 13 Sup. Ct. 503, 37 L. ed. 279; Byers *v.* McAuley, 149 U. S. 608, 621, 13 Sup. Ct. 906, 37 L. ed. 867; Hyde *v.* Stone, 20 How. 170, 175, 15 L. ed. 874; Hess *v.* Reynolds, 113 U. S. 73, 76, 5 Sup. Ct. 377, 28 L. ed. 927.

Filed October 17, 1900.

52 (*Judgment.*)

And on the seventeenth day of October, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a judgment, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

WEDNESDAY, *October* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah. } No. 1355.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that William H. Dent, as receiver of the First National Bank of Decorah have and recover against the Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, the sum of twenty dollars for his costs herein.

October 17, 1900.

53 (*Petition for Rehearing.*)

And on the twenty-eighth day of November, A. D. 1900, a petition for rehearing was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

54 United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Defendant in Error. } No. 1355.

The plaintiff in error respectfully asks that a re-argument of the above-entitled cause be granted as to the propositions, and for the reasons, following:

1. The proposition that the final settlement and distribution in the probate court barred the action in the Federal court.

55 Even admitting, as said in your opinion, that the Federal court must be conceded the same power, as respects a claim of a non-resident creditor, to allow it within eighteen months, which is conferred on probate courts of the State, the result of your decision affirming the judgment of the circuit court does not follow. Your decision claims for the Federal courts other and greater rights

in that respect than the probate court has. Under the statute (cited in your opinion) the probate court has authority to allow the claim, only prior to final settlement and within eighteen months. It was conceded on the argument, is not denied in your opinion, and we think clearly is true, that at the time the action was commenced in the circuit court, the probate court, because of the final settlement of the estate, was without power to allow the claim had it been presented in that court. The indebtedness was incurred by the deceased, while a resident of Minnesota, and while the present statutory provisions as to the disposition of his property in case of death were in force. The plaintiff's right against the estate of the decedent in Minnesota must depend on the law of Minnesota. How, then, can it be that the Federal court can allow a claim against that property which neither the State court of probate, nor any other State court, had power to allow in case the plaintiff had resorted to it?

To say that the right of a non-resident creditor to sue in the Federal court cannot be made to depend on the length of time a probate court happens to allow for making a final settlement, or the time a local court chances to approve a final settlement,
56 when the time rests in the discretion of the court and is largely a matter of convenience, leaves out of consideration several important things. That possibly would be true, if by the statute it were made wholly a matter of discretion of the local court, but not when the statute gives absolutely a reasonable time for commencing suit, and confines the exercise of discretion to a period after the expiration of the reasonable time fixed by the statute. By the statute six months within which to sue is given absolutely. The court has no discretion to shorten the time. But, that the statute makes the right of the creditor to share in the estate after the lapse of the fixed reasonable time conditional upon his claim being presented while the property is yet in the control of the probate court, cannot be so objectionable as to warrant the court in disregarding the condition and thus confer a right which the statute in plain terms denies. Such provision is absolutely essential to practical administration of the estates of a deceased persons.

We submit, also, that the court has failed to give due consideration to the nature and object of administration proceedings. The entire property of the decedent is in the possession of the probate court for the purpose of distribution. The suit to establish the claim is ancillary, in aid of the administration proceeding. It is a suit in fact (though not in form) against the property, for the purpose of determining whether it is one entitled to share in the distribution. The probate court has sole jurisdiction to make the distribu-
57 tion and to determine when it shall be made. When lawfully it has once made the distribution there no longer can be any right to share in the distribution. This distribution, made after notice to the world, is binding on the world (including the Federal courts) because it is a decree *in rem* disposing of property in possession of the court.

The effect of your decision is to deny the right of the State to pro-

vide for the administration of the estates of its deceased citizens within the State, for, if it cannot authorize its courts to determine when an estate has been fully administered and to distribute it free from claims it is without power to administer.

2. The proposition that the decree of distribution and the settlement of the final account did end the administration and divest the probate court of jurisdiction.

Your opinion on this proposition:

1. Fails to give credit to the final decree (a judgment of a court of competent jurisdiction) which declares that the estate has been fully administered, and assigns not only the property particularly described, but also "all other the property of the deceased, in the State of Minnesota."

2. Erroneously* assumes that the probate court in amending the final decree assumed that its jurisdiction to administer the estate still continued. It simply corrected its records pursuant to authority, given in Gen. St. 1894, sec. 4730, to correct or amend its records at any time. Being a court of record it had the right to do
58 so even in the absence of the statute. (Black on Judgments, vol. 1, sec. 161.) In doing so it did not exercise any jurisdiction in the probate or administration of the estate. It simply exercised a right to make its record conform to the facts. It added nothing to its final decree, and took no step in the administration, but simply particularized the property theretofore assigned as "all other the property of the deceased, in the State of Minnesota."

3. Refuses to give credit to the decisions of the supreme court of Minnesota, in that it erroneously assumes that the jurisdiction of the probate court continued for the purpose of enforcing its order of distribution, when in fact it is settled in this State that the probate court has no jurisdiction to enforce its order of distribution. See 61 Minn. 91, Schmidt *v.* Stark: "The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees, or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction. Hurley *v.* Hamilton, 37 Minn. 160, 33 N. W. 912; Gary Probate Law, secs. 48, 612*b*, 629, 633."

59 While the decision in the case is of importance to the parties directly interested, it is of much greater moment. It is so contrary to what has been the general understanding in Minnesota of the Minnesota law, and to us seems so inevitably to lead to widespread confusion and litigation in this State, as to require us to apply

* That the probate court did not understand that it had any further jurisdiction is shown by the fact (not shown in the record, but true) that before bringing suit in the circuit court the Black River national bank applied to the probate court to have the decree of distribution vacated and for leave to file its claim, and the application was denied on the ground that the court no longer had jurisdiction.

for a re-argument of the case, and to warrant the court in granting the application.

EDMUND S. DURMENT AND
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.

I have examined the opinion handed down in the foregoing entitled action and the briefs of counsel, as well as the record. I am of opinion that there ought to be a re-argument of the case on the propositions stated in the foregoing petition and for the reasons therein stated. Said petition is made in good faith and on the advice of the undersigned.

EDMUND S. DURMENT,
Of Counsel for the Plaintiff in Error.

Filed Nov. 28, 1900.

JOHN D. JORDAN, *Clerk.*

60 (*Order Denying Petition for Rehearing.*)

And on the seventeenth day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order denying the petition for a rehearing, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

MONDAY, *December* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
WILLIAM H. DENT, Receiver, etc. } No. 1355.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the plaintiff in error.

On consideration whereof, it is now here ordered by this court, that said petition for a rehearing of this cause be, and the same is hereby denied.

December 17, 1900.

(*Bond on Writ of Error.*)

And on the fourteenth day of January, A. D. 1901, a bond on writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

In United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Defendant in Error.

On error from United States circuit court, district of Minnesota, third division.

61 Know all men by these presents, that we, Security Trust Company, plaintiff in error in the above-entitled action, as principal, and Edward J. Hodgson and Chas. D. Matteson, as sureties, are held and firmly bound unto William H. Dent, as receiver of the First National Bank of Decorah, the defendant in error, above named, in the sum of three hundred dollars lawful money of the United States to be paid unto the said plaintiff, his successors in office, or assigns, for which payment well and truly to be made we jointly and severally bind ourselves and the successors of said Security Trust Company, and the heirs, executors and administrators of the said sureties firmly by these presents.

Sealed with our seals and dated this 4th day of January, A. D. 1901.

The condition of this obligation is such, that whereas a final judgment was rendered and entered in said circuit court for the district of Minnesota in the above-entitled action in favor of the defendant in error and against the said plaintiff in error on the 17th day of April, 1899, and was thereafter affirmed by the judgment of said circuit court of appeals, and the said plaintiff in error has duly made an assignment of errors and is about to apply for a writ of error to issue to said circuit court of appeals in order that said judgment and the records and proceedings in said suit may be reviewed and examined in the Supreme Court of the United States;

Now therefore, if said writ of error shall be allowed and said plaintiff in error shall prosecute its writ to effect, and if it fail to make its plea good, shall answer all costs, then this obligation shall be void, otherwise of force.

In witness whereof the said plaintiff in error has caused this bond to be executed in its corporate name and its corporate seal to be thereto affixed, and the said sureties have thereto set their hands and seals this 4th day of January, A. D. 1901.

SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, [SEAL.]
President, and
CHAS. D. MATTESON, *Secretary.*
EDWARD J. HODGSON. [SEAL.]
CHAS. D. MATTESON. [SEAL.]

Signed and sealed in presence of
H. A. PRESLER.
J. A. LAZERMAN.

62 Approved:
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

January 10th, 1901.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 4 day of January, A. D. 1901, came before me personally Edward J. Hodgson, president, and Charles D. Matteson, secretary of said Security Trust Company, to me well known and who being by me severally duly sworn on oath says: that he, the said Edward J. Hodgson is the president, and he the said Charles D. Matteson, is the secretary, of said Security Trust Company, a corporation, and that the foregoing bond was executed by said Security Trust Company by authority of its board of directors, and that the seal thereto attached is the corporate seal of said corporation, and each acknowledged the same to be the free act and deed of said corporation.

And at the same time and place before me personally appeared Edward J. Hodgson and Chas. D. Matteson, two of the persons who executed the foregoing bond as sureties thereon, to me personally known to be the same persons described in and who executed the foregoing bond as sureties, and each severally acknowledged the same to be his own free act and deed.

Witness my hand and official seal this 4th day of January, A. D. 1901.

JOHN A. LAZERMAN,
[SEAL.] *Notary Public, Ramsey County, Minnesota.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Edward J. Hodgson and Chas. D. Matteson came before me personally on this 4th day of January, A. D. 1901, and being severally duly sworn each for himself doth depose and say: that he is
63 the surety above named, and a resident and freeholder of the State of Minnesota, and worth the sum of six hundred dollars ($600) over and above his debts and liabilities, and exclusive of his property exempt by law from execution.

EDWARD J. HODGSON.
CHAS. D. MATTESON.

Subscribed and sworn to before me this 4th day of January, A. D. 1901.

JOHN A. LAZERMAN,
[SEAL.] *Notary Public, Ramsey County, Minn.*

(Endorsed:) United States of America. In supreme court. Security Trust Company, as administrator, etc., plaintiff in error, *vs.* William H. Dent, as receiver, etc., defendant in error. Cost bond on writ of error. Filed Jan. 14, 1901. John D. Jordan, clerk. Durment & Moore, attorneys and counselors at law, 616–619 Germania Life Ins. bldg., St. Paul, Minn.

(*Writ of Error.*)

And on the fourteenth day of January, A. D. 1901, a writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, the original of which is hereto attached and herewith returned.

64 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals before you, or some of you, between The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, plaintiff in error, and William H. Dent, as receiver of the First National Bank of Decorah, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of January, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] No. — Security Trust Company, as administrator, etc. plaintiff in error *vs.* William H. Dent, rec'r, etc. Writ of error. Filed Jan. 14 1901 John D. Jordan, clerk.

UNITED STATES OF AMERICA, }
Eighth Circuit. }

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in the city of St. Louis, Missouri, this eighteenth day of January, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

65 (*Citation.*)

And on the fourteenth day of January, A. D. 1901, a citation was filed in the clerk's office of said circuit court of appeals, in said cause, the original of which with admission of service thereon, is hereto attached and herewith returned.

66 UNITED STATES OF AMERICA, *ss:*

To William H. Dent, as receiver of the First National Bank of Decorah, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the United States circuit court of appeals for the eighth circuit wherein The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this tenth day of January, in the year of our Lord one thousand nine hundred and one.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Security Trust Company, as administrator, etc., plaintiff in error, *vs.* William H. Dent, rec'r, etc. Citation. Service of within citation admitted this 12th day of January A. D. 1901. Edward C. Stringer, McNeil V. Seymour, att'ys for Wm. H. Dent receiver &c. defendant in error. Filed Jan. 14 1901. John D. Jordan, clerk.

67 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing sixty-six pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of the said United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, was plaintiff in error, and William H. Dent, as receiver of the First National Bank of Decorah, was defendant in error, No. 1355, May term, 1900, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original citation with admission of service thereon and the original writ of error with my return thereto is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this eighteenth day of January, A. D. 1901.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 18,034. U. S. C. C. of appeals, 8th circuit. Term No. 240. The Security Trust Company as administrator of the estate of Sumner W. Matteson deceased, plaintiff in error, *vs.* William H. Dent, as receiver of the 1st National Bank of Decorah. Filed January 28, 1901.

No. 242.

FILED
FEB 3 1902
JAMES H. McKENNEY,
Clerk.

Brf. of Durment for P. E.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Feb. 3, 1902. No. 240

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased,
Plaintiff in Error,

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.

Supreme Court of the United States.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased,
Plaintiff in Error,

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah,
Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The plaintiff (defendant in error), as receiver of an Iowa National Bank, commenced an action at law against defendant (plaintiff in error), alleged to be administrator of the estate of Sumner W. Matteson, deceased, to recover on certain promissory notes executed by Sumner W. Matteson in his life

time, alleging that the estate was yet in process of settlement in the probate court for Ramsey County, Minnesota (Record, pages 1 to 7). The defendant answered alleging that the estate had been fully administered and distributed in said probate court, and it was no longer administrator; that an administrator having been duly appointed, notice given to creditors, the estate duly administered, finally settled and distributed, and the plaintiff having failed to present the notes, or any claim on account thereof, to the probate court, or to commence any action to recover on the same until after the expiration of the time fixed to present claims and until after final settlement of the estate, the action was barred (Record, pages 8 to 12).

The answer also set forth a further defense which was abandoned and is entirely out of the case. A reply was filed which will be found at pages 13 to 14 of the record.

The case was submitted upon an agreed statement of facts duly filed. The facts as stipulated, in brief, were: Sumner W. Matteson, from a time anterior to the execution of the notes sued on until his death, was a citizen of Minnesota, residing in St. Paul in Ramsey County, where he died, July 22, 1895, leaving real and personal estate there situate. On September 3, 1895, the probate court of that county duly appointed the defendant administrator of his estate. Notice to creditors was given and the administration duly had in accordance with the laws of Minnesota. The final account of administration was settled and allowed, and final decree of distribution was entered

April 27, 1896, determining that the estate of the deceased had been fully administered and assigning to and vesting in the heirs and next of kin of the deceased certain real and personal property therein described and "*all other of the estate of the deceased in the state of Minnesota.*" The officers and directors of the bank knew, as early as September 1, 1895, that said Sumner W. Matteson had died in St. Paul a resident of said city. The plaintiff was appointed receiver of the bank November 24, 1896, and had no such knowledge until December 26, 1896. The managing officers of said bank had knowledge of the pendency of the said probate proceedings as early as November 1, 1895. The said bank never presented its claim to said probate court, and commenced no action thereon in any court, and no action was commenced until the plaintiff commenced this action in the federal circuit court of Minnesota on January 22, 1897. Facts were admitted showing distribution made by defendant after the final decree had been entered. There are other immaterial facts admitted. (For stipulation of facts see record, pages 14 to 31).

No claim was made at the trial nor in the circuit Court of Appeals, that any of the proceedings in the probate court were irregular or insufficient, but the sole question was as to the effect of the law of Minnesota and the probate proceedings. The reply raised the question of the regularity of the notice given of the order limiting the time to present claims, but that position was abandoned, and the facts stipulated show that notice was given as required by the statute. The plaintiff claimed that the settlement and

allowance of the final account of the administrator and the decree of distribution were not effectual to close the administration and discharge the administrator; that the laws of Minnesota fixing the time within which claims shall be presented did not bind the plaintiff in the federal court; that the plaintiff is not bound by the probate proceedings. The defendant asserted to the contrary.

The trial judge was of opinion that the statute of Minnesota requiring claims to be presented to the probate court within the time limited is not binding on the Federal Courts. Touching the claim that the estate had been fully administered and the administrator gone out of office, the trial judge was of opinion, there being no statute in express terms authorizing the discharge of an administrator, that the (alleged) common law rule prevailed and the administrator continued in office notwithstanding any attempt of the probate court to discharge. He also doubted that there was a sufficient discharge, even though the court had authority, there being no order in terms discharging the administrator. Thereupon he gave judgment for $13,535.06 to be satisfied out of the property and effects of the deceased and ordering *that it be certified to the probate court as a claim duly approved, established and allowed against the estate of the deceased.* This judgment was taken to the Circuit Court of Appeals on writ of error and affirmed by that court. The circuit court of appeals was of opinion that the administration was pending; that the administrator continued in office and subject to the jurisdiction of the probate court; and that be-

cause the statute permitted the probate court in its discretion within eighteen months and before final settlement of the estate to allow the claim of a creditor, the federal courts must be conceded the same power as to claims of non-resident creditors. (For opinion of C. C. A. see Record, pp. 45 to 48).

The case was removed to this Supreme Court from the Circuit Court of Appeals on writ of error.

ERRORS ASSIGNED.

1. The Court erred in granting judgment in favor of the petitioner on the pleadings and the agreed facts stipulated by the parties and spread upon the records.

2. The Court erred in not ordering judgment on the pleadings and agreed facts stipulated by the parties and spread upon the records, in favor of the defendant.

3. The judgment is not supported by the facts so stipulated and agreed upon in writing and filed and spread upon the records in said action.

4. The pleadings and the facts therein set forth and the agreed facts stipulated and filed in said action and spread upon the records (upon which said judgment is based) are not sufficient to authorize the entry of said judgment or to support the judgment so rendered and entered.

5. The agreed facts stipulated in writing and filed in said action and spread upon the records are

not sufficient to authorize the entry of said judgment or to support the said judgment so rendered and entered.

6. The said judgment contravenes Article IV, Section 1, of the Constitution of the United States in that it does not give full faith and credit to the public acts of the state of Minnesota relating to the property and estate in Minnesota of citizens of that state dying therein, and in that it denies full faith and credit to the judicial proceedings of a probate court in said state duly had in a matter of which it had, and had duly acquired jurisdiction.

7. The said judgment contravenes Article X of the Amendments to the Constitution of the United States in that it denies to the state of Minnesota, the right reserved to it in said Article X, by law to provide for, control and regulate the administration and disposition of the estate and property, within the state, of its deceased citizens who die within the state.

PRELIMINARY.

Minnesota probate courts are established in the constitution of the state, and have exclusive jurisdiction of the estates of deceased persons. Administration is not according to the common law, but entirely according to statute, the legislature in the probate code having enacted a complete system of probate law, according to which the rights and remedies of creditors against the estate are materially different than at common law. The probate of an estate is

a proceeding in rem in which the probate court, through its officer, the administrator, takes into its possession the estate of the deceased, and appropriates it to the payment of the debts of the deceased.

61 Minn. 343, *McNamara v. Casserly.*

The state constitution and statutory provisions bearing upon the question involved are the following:

Constitution Art. VI., Sec. 7. "There shall be established in each organized county in the state a probate court, which shall be a court of record, and be held at such times and places as may be prescribed by law. * * * A probate court shall have jurisdiction over the estates of deceased persons, and persons under guardianship, but no other jurisdiction, except as prescribed by this constitution."

General Statutes 1894:

Section 4523. "The probate court at the time of granting letters testamentary or of administration, shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

Section 4524. "The probate court may, upon good cause shown by the executor or administrator, extend the time for the settlement of the estate not exceeding one year at a time, unless in the judgment of the court a longer time be necessary."

Sec. 4527. "When there is not sufficient personal estate in the hands of the executor or administrator to pay all the debts and legacies and the allowance to the widow and minor children, the probate court may, on petition of the executor or administrator, order the sale of the real estate or so much thereof as may be necessary to pay the same."

Sec. 4471, provides that real estate shall descend subject to the debts of the intestate.

Section 4638. "Every executor or administrator shall render his account of administration within the time allowed him for the settlement of the estate and at such other times as he is required by the court, until the estate is wholly settled."

Section 4639. "When the estate is fully administered, the executor or administrator shall petition the probate court for an order fixing a time and place in which it will examine, settle and allow the final account of the executor or administrator, and for the assignment of the residue of the estate to the persons entitled thereto by law. The final account shall be filed in the probate court at the time of filing said petition."

Section 4640. "Upon the filing of said petition the court shall make an order fixing a time and place for hearing the same. Said order shall be published according to law."

Section 4641. "On hearing such petition, the probate court shall examine every executor and administrator upon oath as to the truth and correctness of his account before the same is allowed; but such examiation may be omitted when no objection is made to the allowance of the account, and there is no reason to doubt the justness and correctness thereof; and the heirs, legatees and devisees may be examined on oath upon any matter relating to the account of any executor or administrator, whenever the correctness thereof is called in question. If from such examination the account is found just and correct the probate court shall allow and settle the same, and upon satisfactory evidence shall determine the rights of the persons to the residue of said estate and unless partition is asked for and directed as hereinafter provided, make a decree accordingly, and assigning said residue to the persons thereto entitled by law."

Section 4642. "In such decree the court shall name the persons and the proportion or parts to which each is entitled, and if real estate, give a description as near as may be of the land to which each is entitled; and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same; and a certified copy of any decree of distribution of real estate may be recorded in the office of the register of deeds in every county in this state in which are situated any of the lands described in such decree; and such register of deeds shall enter in his reception book the name of the deceased as grantor, and the names of the heirs, legatees or devisees, as grantees, and shall make in such reception book so many separate grantor and grantee entries for such decree as there are persons taking real estate in such county under said decree."

Section 4509. "At the time of granting letters testamentary or of administration, the court shall make an order limiting the time in which creditors may present claims against the deceased for examination and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons against deceased. No claim or demand shall be received after the expiration of the time so limited, unless for good cause shown the court may in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed unless presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate."

Section 4510. "The order prescribed in section one hundred and two shall be published according to law, and shall be notice to all creditors and persons interested."

Section 4511. "All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counterclaim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim."

Section 4514. "No action at law for the recovery of money only shall be brought in any of the courts of this state against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: Provided that this provision shall not be construed as affecting any lien existing at the date of such death. Provided further, that said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who died prior as well as to those who may die after adoption of this code."

Section 4517. "Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets, if any."

Section 4522. "In case of appeal from the allowance or disallowance of any claim in whole or in part, the district court shall certify to the probate court the decision or judgment rendered therein."

Sec. 4665 provides for an appeal to the District Court.

Sec. 4668 provides for serving notice of appeal.

Sec. 4672 provides that the District Court shall try the case as if originally commenced in that court.

Sec. 4673 provides that pleadings shall be made up as in civil actions, and the issues of fact tried as in other actions.

Sec. 4676. In case of a reversal or modification of the order appealed from the District Court makes such order as the probate court should have made, and certifies its judgment to the probate court.

Sec. 4730. "The probate court may, at any time, correct, modify or amend its records to conform with the fact sin the same manner as a district court."

ARGUMENT.

The first ground of defense is that the defendant when sued was not administrator. Both the trial court and the circuit court of appeals proceeded upon the theory that the defendant was then administrator. The judgment is against the defendant only as such administrator, and the opinion filed by the circuit court of appeals expressly holds that the administrator continued in office. That the judgment cannot be sustained, if when sued the defendant was not administrator, is clear beyond need for argument.

The first question for consideration is: Was the defendant administrator at the time the action was commenced? The answer to this question of course depends upon the law of Minnesota. The administrator was the officer of a Minnesota court, appointed by that court to administer upon property left within the state by a resident of Minnesota who had died in that state. Necessarily the length of time the administrator should continue in office, and when and how cease to be administrator, depends upon the law of Minnesota. The statutes of Minnesota do not provide for any formal order discharging an administrator. They provide that when the estate has been fully administered the court shall make an order settling and allowing the administrator's final account and make a decree distributing the estate to the persons by law entitled thereto. The legal effect of such allowance of the final account and such final decree is to end the administra-

tion and render the administrator *functus officio.* That this is so is clearly shown in 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County*, which was a case involving not only this same question, but also the same administration proceeding now here under consideration. This is the latest opinion of the Supreme Court of Minnesota in which the question has been considered, and in it every phase of the question is considered and the subject discussed more at length than in any former decision by that court. That such is the law of Minnesota was not in doubt before that decision was rendered, but was clear from the Statutes of the State, as well as from the prior decisions of the Supreme Court of Minnesota.

The evident theory of the Probate Code is that the office of administrator is temporary and ceases with full administration of the estate. Sec. 4523, above set out, requires the court to limit the time within which the estate shall be settled. Secs. 4639, 4640, 4641, 4642, above set out, provide for allowing the administrator's *final* account, when the estate shall have been *fully* administered, and for a decree of distribution to be made *after* the estate shall have been *fully* administered and the administrator's *final* account allowed. There is no provision of statute requiring, and none authorizing, the probate court thereafter to exercise any jurisdiction in the matter. The probate court thereafter cannot even compel the administrator to deliver the property to the distributees, but to obtain possession they must resort to another court.

The decisions of the Supreme Court of Minnesota are all to the same effect. See the following:

33 Minn. 94, *State v. Probate Court of Sibley County.* On page 96, the court says: "The want of jurisdiction in this case is still further emphasized by the fact that the administration has been closed by the allowance of the administrator's account and his discharge and there is no attempt to re-open it. So long as it remains closed the probate court has no more jurisdiction over the estate, or the property belonging to it, than if there had never been any administration and there was no attempt to institute one. The jurisdiction of the court has been fully exhausted, and it can do nothing further unless it is restored in the manner pointed out in the statute."

40 Minn. 296, *State v. Probate Court of Ramsey County.* The court says (page 299): "The object of the application on the part of the acting administrator was to submit his final account and close the administration. The order made was evidently so intended, and must be construed as a final order discharging the administration of the estate. The parties had their remedy by appeal, but the order could not be attacked collaterally or treated as void, so as to warrant subsequent proceedings to reach the real estate as if the administration was still in progress and the estate still unsettled.

"The omission of the land from the inventory, and the subsequent discovery of the real estate of the deceased which was not reduced to assets by the administrator or distributed to the heirs do not operate to revive the administration and open the judgment, or warrant further proceedings. The land descended to the heirs, subject to the claims of administration upon it. The effect of a decree assigning the real estate to the heirs is simply to discharge it from the administration, and, of course, the final discharge of the administration must discharge the lien of the creditors."

47 Minn. 22, *Stackhouse v. Berryhill.* After an estate had been administered as intestate, a proceeding to probate a will of the deceased was instituted. The court says (page 22): "Here the proceedings had terminated, and a final decree had been entered, when the will was presented to the probate court. The letters of administration were beyond recall, for their mission had ended. The order of the court whereby this will may be allowed in this state cannot of itself reverse the first administration, nor will it have the effect to vacate and set aside the final decree therein."

61 Minn. 91, *Schmidt v. Stark*, holds that the decree of distribution cannot be entered until after the estate has been fully administered, and that the entry of the decree of distribution divests the probate court of jurisdiction and thereafter it cannot even compel the administrator to turn the property in hand over to the distributees.

86 N. W. Rep., 18, *Ganser v. Ganser*, (Minnesota Supreme Court):

"The estate was fully administered, and final account made, upon which, in the due course of law, the Probate Court duly made its final decree, distributing the residue of the estate, after allowance of the account of the administratrix, to the heirs of the deceased. The final decree was made in 1891, and, so far as appears, was acquiesced in by all interested parties, *and the administration of the estate became then finally ended and closed.*"

87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County*: The syllabus, prepared by the court, is, "1. The Probate Code of this state makes no provision for the formal discharge of an administrator, but the necessary legal effect of an order of the probate court allowing the final account of the administrator and its final decree of distribution, assigning the whole of the estate to the heirs and distributees, is to remove the estate of the

deceased from the jurisdiction of the court, and to render the office of administrator, which depends upon such jurisdiction, *functus officio*.

2. After the estate has been so settled and assigned, and while the final decree of distribution remains unreversed and unmodified, the probate court has no jurisdiction to entertain a petition to issue a citation to the administrator requiring him to further account for the property belonging to the estate which is in his possession, or came into his possession."

The answer made by plaintiff at the trial and in the Circuit Court of Appeals to this proposition asserted by the defendant, and to the authorities cited, was in brief as follows:

1. By the allowance of the final account and the entry of the decree of distribution the Probate Court divested itself of jurisdiction over the property (the estate of the deceased), but not of jurisdiction over the administrator.

2. The record shows that neither probate court nor administrator understood that the jurisdiction of the probate court had ceased.

3. The probate court and the administrator continued to exercise jurisdiction in the administration after the entry of the final decree, because thereafter a claim was allowed against the estate, and the probate court amended the final decree by inserting the description of certain lands not specially described in the decree as originally entered, and by correcting the description of other lands which were incorrectly described in the decree as originally entered.

4. There was nothing in the record to show that the administrator had complied with the final decree by making distribution in accordance with its provisions.

5. The administrator continued in office to administer upon any property which might be discovered thereafter.

That no point in this answer was well taken was clear from the constitutional and statutory provisions of the State and from the decisions of the Supreme Court of Minnesota even prior to the decision in 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court*. But the opinion in that case meets and refutes each of the points.

The jurisdiction of the probate court over the administrator was incidental to its jurisdiction over the property. When its jurisdiction over the property ceased, jurisdiction over the administrator necessarily was at an end.

The understanding of the probate court and of the administrator is immaterial, because that understanding could not avoid the legal effect of the final decree. But the record in fact shows that the administrator and the court understood that the administrator had been discharged and the jurisdiction of the court ended. (See record, pp. 19, 20, petition and order to correct final decree, and pp. 29, 30, the acts of the administrator after entry of final decree).

Neither the administrator nor the court took any steps in the administration of the estate after the entry of the final decree. It is true that an officer of

the Trust Company, after the entry of the final decree, made the following entry on a claim which had been filed before the entry of the decree: "We allow the within claim this 20th day of May, '96. Security Trust Company, by Chas. D. Matteson, Sec'y." But the administrator has no authority to allow a claim. That can be done only by an order of the court (Sec. 4517 cited above). No such order was made, and no change was made in the final account and the court took no action in the matter. The amendment of the final decree was not a step in the administration. Describing property not theretofore particularly described in the final decree, simply particularized what was included in the decree as originally entered under the terms "all other the estate of the deceased in the State of Minnesota." As said by the Supreme Court of Minnesota, "The decree was corrected, not in the exercise of any jurisdiction over the estate, but by virtue of the power of the court to amend its records to conform with the facts; that is, to make the records speak truly as to the past official acts of the court," and under the authority of Sec. 4730 above set out.

The stipulated facts show that the administrator had in fact made distribution in accordance with the terms of the final decree (See record, p. 29, 30). But if it were otherwise it would be immaterial, because the statute does not require, nor provide for, any report to be made to the probate court showing that distribution has been made, nor has the probate court any jurisdiction to enforce distribution in accordance with its final decree. The remedy is to

be sought in another court. The reason is this: By the constitution of Minnesota the jurisdiction of that court is confined to the "estates of deceased persons" and does not extend so far as to permit it to try questions of disputed titles or rights to possession. While the final decree determines who are the persons by law entitled to succeed to the property of the deceased and in what proportions, and that the administrator has not any longer the title or right to possession by virtue of his office, it does not determine who in fact has the title and right to possession at the time of the entry of the final decree. The person named in the final decree may have transferred his interest, or his title and right to possession may have been divested by attachment or levy and sale on execution, or by insolvency proceedings. In such case the final decree would be no protection to an administrator if he should deliver the property to the person named in the final decree. All questions of title and right to possession, after the claims of administration have been satisfied, concern the property and estate of living persons only, and of such questions the probate court has not jurisdiction.

The administrator did not continue in office to administer on after discovered property. There could be no after discovered property, because the final decree adjudged that the estate had been fully administered, and distributed not only the property therein particularly described, but also "all other the estate of the deceased in the State of Minnesota." (See Record, pp. 17 to 19 for final decree). But, if it were not so broad in its terms, that the adminis-

trator would not have continued in office was settled by 40 Minn, 296, *State v. Probate Court*, cited above, long before the decision in *State ex rel Matteson v. Probate Court of Ramsey County.*

It was also suggested by the plaintiff, by way of argument, that when the administrator ceases to exist or is discharged the sureties on the administration bond are discharged and thereafter there can be no suit on the bond, and therefore the administrator must have continued in office. The administrator in this case being a Trust Company, by law was exempt from giving bond and in fact gave none. But it would make no difference if it were otherwise. The liability of the administrator on his bond is a personal liability—a liability imposed upon him personally for damages resulting from a failure to perform the duties of administrator, and to be paid, not out of the estate which he represents, but out of his individual estate. The final decree operates to change every liability of the administrator from an *official* liability to a *personal* one.

Woerner's Am. Administration (2 ed.) Vol. 2, *p. 1248, Sec. 569.

67 Cal. 279, *Melone v. Davis.*

The opinion of the Circuit Court of Appeals, as far as it bears upon the question of the continuance of the administrator in office, is fully met by the Minnesota decisions above cited, and particularly by 87 N. W. Rep. 783, *State ex rel Matteson v. Probate Court of Ramsey County.*

The second ground of defense is that plaintiff's claim is barred by reason of the failure to present it to the probate court, or to commence the action, within the time limited by order of the probate court for creditors to file claims, and if not, then it is barred by reason of the failure to present the claim to the probate court, or to commence the action, prior to the close of the administration.

It is settled that the failure to so present the claim to the probate court, according to the law of Minnesota barred the claim so that the plaintiff has no right which he could enforce in any court of Minnesota.

Sec. 4511, set out above.

39 Minn. 212, *Fern v. Leuthold.*

47 Minn. 382 (384) *Hill v. Nichols.*

61 Minn. 366, *Hantch v. Massolt.*

66 Minn. 246 (249, 250) *State v. Probate Court of Rock County.*

78 N. W. Rep. 95 (98) *Fitzhugh v. Harrison.*

We understand the plaintiff to concede that the claim is barred according to the law of Minnesota and that he has no right which he can enforce in any State Court. But he contends that the Minnesota Statute does not bind him in the Federal Court. Therefore the question for consideration is: Do the Statutes of Minnesota, particularly Sec. 4511 above set out, bind non-residents of Minnesota in the Federal Courts? The deceased resided in Minnesota at the time he gave the obligations sued on, continued to reside there until his death, and the law of Min-

nesota as to the estates of deceased persons and the rights and remedies of creditors against the same, remained unchanged. Hence there is no question of violation of contract rights, ant the sole question is: Does the mere fact that plaintiff is a non-resident and sues in a Federal Court render the Minnesota Statute nugatory?

The plaintiff has only the personal promise of the deceased to pay the debt. He has no contract right or claim to have his debt paid out of the property of the deceased, except in so far as the law of Minnesota is part of the contract. His right to have his debt paid out of the estate of the deceased is only such as the law gives. The State has the right to provide what property left within its borders, upon the death of a resident of the State, shall be applicable to the payment of the debts of the deceased: to provide to what extent such property shall be taken for the payment of such debts, and to provide in what manner and within what time such property may be applied to the payment of such debts. Congress has no power to legislate concerning the matter, or, if it has, it has not seen fit to exercise the power, but has left the State free to act unrestrained by congressional legislation. There is no general law on the subject which can override the express statutory enactments and decisions of the courts of Minnesota. Hence, when a Federal Court comes to investigate the question of plaintiff's right it necessarily looks to the law of Minnesota for the measure of that right, because there is no other law giving plaintiff any right against the estate of the deceased.

While the Federal Court may proceed according to its own methods of investigation in any investigations it may make to determine whether the right of action exists which plaintiff claims to have, yet it cannot create nor confer that right of action, but must find it existing in the law. Inasmuch as there is no law except the law of Minnesota, giving the creditor the right to have the property of the deceased in Minnesota applied to the payment of his debt, the Federal Court must find that right of action to exist in the law of Minnesota. Otherwise it must declare that there is no right of action. So far as the Statute of Minnesota is one conferring, creating or limiting the right of the creditor to have his debt paid out of the property of the deceased, and is not one merely providing a method of enforcing a right otherwise existing, it is of the substance of the right of action and not a matter of remedy, and is necessarily binding on the Federal Court. This is true whether the Statute be viewed as a statute of limitations or as a rule of property, because in either case no right of action exists unless the facts bring the case within the terms of the statute. The courts generally have held similar statutes to be binding on the Federal Courts.

72 Ala. 314, *Jones v. Drewry*, is a case involving a statute in substance the same as the Minnesota statute and in which this same question was presented to the Court. The court examined at length the question here presented and held that the statute was binding on the non-resident in the Federal Court.

It also showed wherein the decisions cited in support of the contrary contention are not applicable.

10 Fed. Rep. 53, *Pulliam v. Pulliam*. In this case, reconsidering a former decision by him in the same action, Judge Hammond, on page 73 to 79, examines and discusses the grounds upon which such statutes stand, more fully than any other opinion we have seen. He concludes that they are not only statutes of limitations, but also rules of property, and binding on the Federal courts, and that the contrary contention finds no support in Union Bank v. Jolly, Payne v. Hook and other cases cited.

27 Fed. Rep. 405, *Dodd v. Ghiselin*, opinion by Brewer, J., holds that the laws of the state for settlement of estates of deceased persons are binding on the Federal courts.

19 Fed. Cases (Case No. 11376), page 1260, *Pratt v. Northam*, opinion by Justice Story, holds a like statute to bind the Federal courts, even in equity. He says (page 1261):

"This statute of limitations as to executors and administrators, is not created for their own security or benefit; but for the security and benefit of the estates, which they represent. It is a wholesome provision, designed to produce a speedy settlement of estates, and the repose of titles derived under persons who are dead."

63 Fed. Rep. 208 to 213, *Walker v. Brown*. The court of appeals, Eighth Circuit, discusses the jurisdiction of the federal courts over estates of deceased persons. Says the court: "In other words, the jurisdiction of these courts over the administration of

estates is less extensive than that which was formerly exercised by the English chancery courts. Their jurisdiction at best is but a limited one, depending as it does in all cases either upon the existence of a federal question or diverse citizenship; and they are bound, like the state courts, to render a faithful obedience, within certain well-defined limits, to local administration laws that have now rendered it possible to administer estates fairly and equitably without invoking the extraordinary powers of a court of chancery."

5 Peters, 523, *Smith v. Union Bank*. Held, rights of creditors in estates of deceased persons depend on the law where administration is had.

4 How, 498, *Aspden v. Nixon*: "It is proper, however, to remark in this connection, that the courts of the United States held in Penasylvania are administering the laws of that state, and are bound by the same rules governing the local tribunals; and that by those laws a devisee, before he can take a legacy, must give security that if any debt or demand should afterward be recovered against the estate of the testator, the devisee shall refund."

76 U. S. (9 Wall.) 754-5, *Walker v. Walker's Exr.* "The circuit courts of the United States, with full equity powers, have jurisdiction over executors and administrators, where the parties are citizens of different states, and will enforce the same rules in the adjustment of claims against them that the local courts administer in favor of their own citizens."

88 U. S. (21 Wall.) 280, *Yonley v. Lavender*: "The administration laws of Arkansas are not merely rules of practice for the courts, but laws limiting the rights of parties, and will be observed by Federal courts in the enforcement of individual rights."

113 U. S. 449, *Morgan v. Hamlet*, held a statute, substantially like the Minnesota statute, to be binding on the Federal court. It was an action in equity. The court said (page 451): "In Arkansas it appears that there is a special statute of limitations governing claims against estates of deceased persons, commonly called the statute of non-claim. It is as follows:

'All claims not exhibited to the executor or administrator, as required by this act, before the end of two years from the granting of letters, shall be forever barred.'" Again (page 452):

"Whatever its description, it was a claim against the estate of John G. Morgan, and for which his personal representative was in the first instance liable; and the statute is a bar to every such claim, unless presented within the time prescribed."

132 U. S. 484, *Rio Grande R. Co. v. Gomila*: "We do not question the general doctrine laid down in Yonley v. Lavender, 88 U. S. 276, 279, 280, to the effect that the administration laws of a state are not merely rules of practice for the courts, but laws limiting the rights of the parties, and will be observed by the Federal courts in the enforcement of individual rights, and that those laws upon the death of a party withdraw the estate of the deceased from the operation of the execution laws of the state, and place them in the hands of his executor or administrator for the benefit of his creditors and distributees. * * * We do not recall any case now where the Federal courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicil has confided the general administration of estates, etc."

The following decisions are pertinent to this proposition:

172 U. S. 358 *M. K. & T. Trust Co. v. Krumseig*: "We think it a satisfactory reply to such a proposi-

tion that the complainants in the present case were not seeking equity, but to avail themselves of a substantive right under the statutory law of the state. It seems to be conceded, or, if not conceded, it is plainly evident, that if the cause had remained in the state court where it was originally brought, the complainant would have been entitled, under the public policy of the State of Minnesota, manifested by its statutes as construed by its courts, to have this usurious contract canceled and surrendered without tendering payment of the whole or any part of the original indebtedness. The defendant company could not, by removing the case to the Federal court, on the ground that it was a citizen of another state, deprive the complainants of such a substantive right. With the policy of the state legislation the Federal courts have nothing to do. If the states, whether New York, Arkansas, Minnesota, or others, think that the evils of usury are best prevented by making usurious contracts void, and by giving a right to the borrowers to have such contracts unconditionally nullified and canceled by the courts, such a view of public policy, in respect to contracts made within the state and sought to be enforced therein, is obligatory on the federal courts, whether acting in equity or at law. The local law, consisting of the applicable statute as construed by the supreme court of the state, furnishes the rule of decision."

72 U. S. (5 Wall.) 419, *Ewing v. City of St. Louis*: It was an action in equity for relief from an assessment for local improvements. The court said: "The complainant can ask no greater relief in the courts of the United States than he could obtain were he to resort to the state courts. If in the latter courts equity would afford no relief, neither will it in the former."

80 U. S. (13 Wall.) 243 *Ex parte McNiel*. In an action to recover a penalty under pilot regulations established by the state, it was said with reference

to federal courts: "Jurisdiction having attached, his case is tried there upon the same principles, and its determination is governed by the same considerations, as if it had been brought in the proper state tribunal of the same locality."

103 U. S. 559, *Ouachita County v. Wolcott*, seems to us to fully sustain our contention that this statute is binding against the non-resident in the Federal Court, and to answer the objections urged by plaintiff and the Circuit Court of Appeals. In that case a failure to present a warrant to the county court within the time fixed by an order of court made pursuant to statutory authority, was held to be a defense to an action commenced in the federal court to recover on the warrant, though the action was commenced in the Federal Court before the expiration of the time fixed by the order of the court.

Plaintiff argued, and the Circuit Court of Appeals seemed to accord some weight to the argument, that the Minnesota Statute attempts to prohibit the non-resident creditor from resorting to the federal courts and therefore is invalid as to the non-resident in the federal court. We submit that the argument is without foundation. Such is not a necessary interpretation of the statute, but if it were the Federal Court would disregard only the provision prohibiting a resort to the Federal Court and would enforce every other provision of the Statute. The Statute does not in terms forbid the non-resident creditor to go into the Federal Court. The state has no power over the Federal Courts, neither to confer nor to take away jurisdiction. But it has power to legislate

concerning the property of its own citizens within its own borders and for its own courts, and it will not be presumed that it has attempted to do anything more. The statute has created the right of the creditor to have his debt paid out of the property of the deceased, but upon the condition that it be presented within the specified time, and has prescribed the state courts in which the remedy for the enforcement of that right must be had. This clearly it was competent for the state legislature to do. If that right is one for which a remedy is afforded in the federal courts under the jurisdiction conferred on these courts by the constitution and laws of the United States, the creditor may seek his remedy in the federal court. But the creditor's right depends upon the same condition in whatever court he seeks his remedy. If he would seek his remedy in a federal court, he must do so within the same time he is required to take it if he should resort to the state court.

If the Statute does attempt to prevent the creditor from finding his remedy in the Federal Court, then the matter comes to this: The Statute gives the creditor a right to have his debt paid from the estate of the deceased upon condition, first, that it shall be presented within the prescribed time, and second, that if disputed it shall be tried in the State Court. In that case the Federal Court will disregard the condition requiring the controversy to be tried in the state court, but enforce the condition as to time.

10 Fed. Cases (No. 5630) p. 382, *Goshorn v. Goshorn*. In Ohio a statute required an action to charge the widow and heirs for the debt of the ancestor to be commenced within one year, and required the action (if more than one person were liable) to be filed on the chancery side of state "Court of Common Pleas." Such an action was commenced on the equity side of the United States Circuit Court, and it was held that the statute prescribing the one year limitation was binding on the Federal Court.

In 80 U. S. (13 Wall.) *Chicago, etc., R. R. Co. v. Whitton*, where the intent to give the right of action only in the state court was clear, the right was upheld, but the restriction was disregarded, the court said, (pages 285, 286):

"It is undoubtedly true that the right of action exists only in virtue of the statute, and only in cases where the death was caused within the state. The liability of the party, whether a natural or artificial person, extends only to cases where, from certain causes, death ensues within the limits of the state. But when death does thus ensue from any of those causes, the relatives of the deceased named in the statute can maintain an action for damages. The liability within the conditions specified extends to all parties through whose wrongful acts, neglect or default death ensues, and the right of action for damages occasioned thereby is possessed by all persons within the description designated. In all cases, where a general right is thus conferred, it can be enforced in any Federal court within the state having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such Federal Court by any provision of state legislation that it should only be enforced in a state court. The statutes of nearly every state provide for the institution of numerous suits, such as for partition, foreclosure,

and the recovery of real property in particular courts and in the counties where the land is situated, yet it never has been pretended that limitations of this character could effect, in any respect, the jurisdiction of the Federal court over such suits where the citizenship of one of the parties was otherwise sufficient. Whenever a general rule as to property or personal rights, or injuries to either, is established by state legislation, its enforcement by a Federal court in a case between proper parties is a matter of course, and the jurisdiction of the court, in such case, is not subject to state legislation."

See also 103 U. S. 559, *Ouachita County v. Wolcott.*

We submit that counsel for the plaintiff and the Circuit Court of Appeals have a wrong understanding of the provisions in question, Secs. 4509, 4511 above set out. Those sections provide that claims "shall be presented for examination and allowance"; also "that the probate court may require satisfactory vouchers or proofs to be produced in support of any claim." The probate court is not required to receive any voucher, evidence or proof other than the sworn statement of account. The probate court has no power or authority to require or order pleadings to be made, to call a jury, or to try a disputed claim upon the evidence of witnesses—certainly it is not required to do so. Neither administrator nor creditor can compel the probate court to grant any trial of the disputed claim according to the course of the common law or equity. In the matter of the presentation of claims to the probate court and their allowance that court is simply "auditor of claims," performing no "judicial function" in any proper

sense of the term. Such allowance of claims is not the "establishment of claims" which this court has held a state can not limit to its own courts.

103 U. S. 559, *Ouachita County v. Wolcott* is a case in which the court performed substantially the same functions as to claims against the county as the probate court of Minnesota does in the matter of claims against the estate of a decedent. The court held that it was valid legislation, and the non-resident bound to present the claim within the time fixed by the order of court, and that a failure to do so would be a bar to suit in the federal court.

In 133 U. S. 473, *Delaware County v. Diebold Safe and Lock Company*, the proceedings before the county commissioners for the allowance of claims were much more nearly assimilated to proceedings in actions at law than the proceedings in the probate courts of Minnesota. It was held that the controversy of which the federal courts have jurisdiction arose not on the hearing of the claim by the board of commissioners, but on the appeal from their allowance or disallowance of the claim.

135 U. S. 467, *County of Upshur v. Rich* also supports this proposition.

The requirement that claims shall be presented to the probate court cannot be objectionable. That is the only court that has power to order and direct their payment in the course of administration. No federal court has ever failed to respect such requirement. In case of the judgment we complain of and

have brought to this court for review, the federal court ordered the judgment to be presented to the probate court as a claim against the estate. By what authority have the state and its court been deprived of the right to say within what time it will receive such claims?

The Act of Congress provides that the circuit courts of the United States shall have jurisdiction "of all suits of a civil nature, at common law or in equity, where the matter in dispute," etc. This presentation of the claim to the probate court for allowance cannot be said to be a suit of a civil nature, at common law, or in equity. It does not meet one of the requirements of such a suit. There is no suit until an appeal. The aapeal is the commencement of the suit. Then pleadings are made, parties have the right to demand a trial, to call witnesses and have the matter in controversy judicially determined. It is only this judicial determination of issues between parties after examination before a court in a proceeding in which the parties have the right to call witnesses and introduce evidence, and to be heard which it is not competent for the state to confine to its own courts.

In *Yonley v. Lavender*, *supra*, the court adverts to the analogy between probate proceedings and proceedings under a state insolvency law. The analogy between probate proceedings in Minnesota and Receivership proceedings, or proceedings under a state insolvency law is perfect. The probate court is a court not only of plenary, but of exclusive juris-

diction of the estates of deceased persons. It seizes the property of the deceased and through its officer, the administrator, applies it to pay all lawful claims against the property of the deceased and then turns over to those entitled, free from all claims, what remains. It is a proceeding *in rem*. See 61 Minn. 343, *M'Namara v. Casserly*, for a clear statement of the character of probate proceedings in Minnesota. If a court appoint a receiver, it can (in the absence of a statute to the contrary) require all claims against the property to be filed in the court appointing the receiver, and require them to be so filed within any reasonable time it may fix; may try all disputed claims if it see fit, and may refuse to allow any claim not so filed and proven to share in the distribution of the fund—149 U. S. 473, *Porter v. Sabin*. In such case the creditor would have no right to insist on filing and proving his claim by sueing the receiver in a federal court. He would be compelled to file his claim in the court appointing the receiver, and to file it there within such time and make such proof of its validity as that court should order. The court has this power because it has the fund in its grip and the right to distribute it. The court is subject to the power of the legislature, and as to receivership proceedings, the legislature may regulate the procedure in its courts. Why may not the legislature do that which the court otherwise might do, i. e., require the claims to be filed in the court appointing the receiver, and the question of their validity to be tried in that court as a condition to sharing in the distribution of the fund?

Probate proceedings, in Minnesota, are nothing more nor less than a receivership of the property of the deceased for the benefit of his creditors. The jurisdiction given probate courts by the constitution is jurisdiction *in rem*. The probate court has no jurisdiction to try any question "at law" or "in equity" arising between parties. It simply seizes the property and disposes of the property. 61 Minn. *M'Namara v. Cassedy, supra.* Of necessity claims against the fund (the estate) must be presented to that court. Why may the state or the court not provide the time within which the claim shall be presented?

Administration in Minnesota is not the common law administration; the administrator is not the common law administrator; the rights of creditors are not the rights of creditors at common law; the presentation of a claim to the probate court is not in any sense the equivalent of the suit at common law or in equity against the administrator. The state, under its constitution and statutes and through its court has seized the estate of the deceased and has all the powers to dispose of it that a court of competent jurisdiction has to dispose of property taken into its control in a receivership proceeding. It has required that any claim, in order to share in the fund, must be presented and passed upon in a summary way in its probate court within a fixed time. That provision is binding on the world. But it has provided also that if a controversy shall arise as to whether the claim has been properly admitted to share in the fund, the parties

shall be entitled to a trial of that controversy according to the course of the common law, and that it shall be tried in the court of common law jurisdiction. Secs. 4665, 4668, 4669, 4670, 4672, 4673, 4675, 4675, 4677, 4678, cited above. It is this controversy, which the statute gives the right to have tried according to the course of the common law, of which the federal courts have jurisdiction. It arises with the right to appeal which is given by the statute. If the administrator appeals, the non-resident may remove the appeal to the federal court. If the creditor appeals he may do so by instituting his action in the federal court.

This further suggestion will show that it is not the intent nor effect of these statutory provisions to prohibit a resort to the federal courts. No statute in terms inhibits suits against the administrator in any federal court. If such right to sue exists and judgment were obtained against the administrator in the federal court and presented to the probate court within the time fixed by its order, it would be compelled to receive it as a claim against the estate.

We submit that the Circuit Court of Appeals has taken an entirely wrong view of the powers of the federal courts in such matters. The jurisdiction of the federal court is confined to "suits of a civil nature at law or in equity." It has no jurisdiction to administer the estate; no jurisdiction to determine how long the administration shall be kept open; no jurisdiction to provide within what time claims shall be filed; no jurisdiction to receive claims against the

estate nor to allow them in the same way that the probate court has; no jurisdiction to provide when final settlement shall be made, nor to supervise or control the state court in the administration of the estate. The federal court is not a probate court and has no probate jurisdiction. What it can do is in aid of and subordinate to the administration proceeding theretofore commenced and pending in the probate court. When in the course of the administration the right to institute a suit of a civil nature accrues the federal court may entertain that particular suit. That is the beginning and the end of its jurisdiction. In the Minnesota probate proceedings that right to institute a suit of a civil nature on claims of creditors is the statutory right of appeal.

The Circuit Court of Appeals says that "federal courts must be conceded the same power, as respects the claim of a non-resident creditor, to allow it within eighteen months, which is conferred upon the probate courts of the state"; also "that the right of a non-resident creditor to sue in the federal court cannot be made to depend on the length of time that the probate court happens to allow for making a final settlement"; also "the right of a non-resident creditor to bring his action in the national court, ought not to be conditional or made to depend upon the time that a local court chances to approve a final settlement, when the time of such approval rests in its discretion and is largely a matter of convenience."

The effect of the decision of the Circuit Court of Appeals is to nullify the statutes of the state and the acts of the state court and to assert in the federal

court a supervisory power over the probate courts of the state. If claims can be allowed against the estate by the federal court within eighteen months, it follows that the administration of the estate must be kept open for at least eighteen months and claims must be received for eighteen months, regardless of the policy of the state requiring speedy settlement of estates and regardless of the statutes providing for speedy administration. If claims which never have been presented to the probate court within the time fixed by its order can be allowed by the federal court long after the time fixed has expired, it follows that the federal court can override the order of the probate court and the statute of the state. If an administrator can be sued and a claim allowed in the federal court after the probate court has closed the administration, it follows that the federal court may disregard the judgments of the probate court and the statutes of the state, and that the probate court is powerless to administer and the state without authority to provide for admisistration of the estates of its own citizens within the state. This decision still leaves the federal courts powerless to administer, but makes them mighty to prevent administration. The Circuit Court of Appeals impliedly admits that it is bound by the eighteen months limitation, i. e., the longest time the statute permits the probate court in any case to receive claims. Why is the federal court bound by one limitation of the statute and not by another? If the state has the right to say that claims must be presented within eighteen months, why not the right to say within six months? If the

right to say they must be presented within six months, then why not within such time not less than six months as the probate court shall by order and notice fix, having due regard to the condition of the estate.

The Circuit Court of the United States, as to many controversies over which it has jurisdiction, simply stands in the place of the state court having concurrent jurisdiction, administers the same law and declares the same right, though proceeding by its own method of procedure. As we have said, the controversy of which the federal court has jurisdiction in the matter of claims against the estates of decedents in Minnesota is the controversy which would arise on appeal to the district court of the state. But we conceive that if it be admitted that the Circuit Court of the United States stands in the place of the probate court the result would be the same in this case. The statute requires the probate court by order to fix a definite time, not less than six months, within which claims shall be presented. The creditor has a legal right to present the claim within that time, and if so presented the probate court must receive it. If the federal court stands in the place of the probate court, then the creditor has the legal right to present the claim by an action in the federal court within the time fixed by the order. But the creditor has no such legal right to have the probate court receive it after the time fixed in the order. Whether the probate court will receive it later is a matter of discretion, depending on the condition of the estate and the administration proceeding, and

somewhat upon the reason for the creditor's neglect to present it within the time limited. The federal court has no control of the estate, knows nothing of its condition, and is in no condition to exercise a discretion in the matter, which seems to us sufficient reason for denying to that court the powers of the probate court concerning this matter. But if it be that the power to exercise this discretion must be accorded to the federal court, then that power should be invoked by a bill in equity setting forth facts upon which the court could base an exercise of that discretion. To render judgment in an action at law, allowing the claim as a matter of right is not an exercise of discretion.

The federal court has not been content in this case to exercise the same powers that the probate court has in the matter of allowing claims, but has exceeded those powers in this: It has allowed a claim, not in its discretion, but as a matter of right, not only after the time fixed by the order had expired, but months after the estate had been finally settled and the administration closed.

Some or all of the following cases probably will be urged upon the court by the defendant in error in support of the judgment. But we think for the reasons hereinafter stated they are not sufficient to sustain it.

17 Fed. Rep. 820, *Chocett v. Morgan*. In this case it was conceded (and not an issue in the case) that plaintiff was not required to resort to the Probate Court to establish the claim. It was not urged

that the statute was a statute of limitation, so far as it prescribed a time for proving the claim. The defense made was, that the action being an equitable one the failure to present the claim to the Probate Court in the administration proceedings was laches sufficient to bar the action. The court held it not to be laches as matter of law, because evidence might show a sufficient excuse. The court also held that statutes of limitation do not bind Federal courts of equity. It cites as authority, 1 Fed. Rep. 692, *Johnston v. Roe*. An examination of that case will disclose that the sole ground of the decision was, that the state statutes of limitation are not binding on the Federal courts in equity. It also cites as an authority to the same point, 14 Fed. Rep. 886, *Tice v. School District*, but an examination of the opinion in this case will show that it holds squarely to the contrary.

18 Fed. Rep. 291, *Hartman v. Fishback*. This case, perhaps, fairly may be considered to support the plaintiff's claim. It stands alone, and is the decision of a single district judge. There is this difference, however, between the Minnesota statute and the Wisconsin statute there considered, which seems to have been the basis of the decision in the case. The Wisconsin statute contains a general prohibition of suits against executors and administrators, *and does not in terms confine the prohibition to state courts* (R. S. Wis. 1878, Sec. 3845), while the Minnesota statute *prohibits suits in the state courts only* (Sec. 4514). But in any event this

decision is not sound. It assumes that to sustain the statutory bar necessarily is to hold that the claimant could not go into the Federal court even within the time allowed to proceed in the state court. This is not true. The "time limit" affecting the cause of action may operate, though the "court limit," affecting merely the remedy, may not, and the federal courts generally hold the time limit operative though they disregard the limitation on the choice of the forum. This decision treats the statutory provision "as a special course of procedure" provided by the statute. But the time within which the proceeding must be instituted is not a part of the proceeding. We are unable to understand how a limitation which results in a destruction of the cause of action, which prevents a suit being maintained, not alone in some special tribunal, but in any and every tribunal subject to the control of the sovereignty prescribing the limitation, can be held anything other than a statute of limitations. It does not appear that there was in Wisconsin the same provision for a trial on appeal as in Minnesota, and if there was it does not appear to have been called to the attention of the court.

The Minnesota Supreme Court has decided that the Minnesota statutes do not provide merely a special procedure but, that they operate as an absolute bar to the cause of action. That settles the construction to be given to the Minnesota statute by this court. The case of Hartman v. Fishback cannot override the Minnesota decisions.

14 Peters 67, *Sugiam v. Broadnax.* The decision in this case did not involve the question of bar by lapse of time. The grounds of the decision are two: 1. By the terms of the sixth section of the state act in question the suit was excepted from the provisions of the sections of the act relied on to defeat the action. 2. The defense that the state statute prohibited suit in Federal court could not prevail, because such provision of the statute was invalid.

18 How. 503, *Union Bank v. Vaiden.* (*Jolly's Exrs.*) In this case upon the death of a defendant, his administrator was substituted and judgment went against him. Pending administration proceedings the complainant filed its bill in equity, based upon the fraud of the administrator, to compel the payment of the judgment out of the funds which the administrator was going to pay over to the heirs. The only point decided was: "The law of a state limiting the remedies of its citizens in its own courts, cannot be applied to prevent the citizens of other states from suing in the courts of the United States in the state for the recovery of any property or money there to which they may be lawfully or equitably entitled."

23 How. 90 *Green's Admx. v. Creighton.* In this case, pending administration proceedings, and while it was yet open to the creditor to prove his claim in the state court, he filed in the United States court, on the equity side, a bill for discovery of assets and to establish his debt. The only defense was that the jurisdiction was exclusive in the state court, which defense was overruled.

7 Wall. 425, *Payne v. Hook.* In this case the complainant filed her bill in equity, against the administrator, seeking relief on the ground of fraud. It was insisted that, because the powers of the state chancery courts to grant like relief did not begin until after a final settlement of the administration, the chancery powers of the Federal courts were likewise limited. This question of jurisdiction of the Federal Equity courts was the question decided.

88 U. S. (21 Wall.) 276, *Yonley v. Lavender.* This case is in truth an authority in favor of our position, rather than against us. It does declare that the creditor may resort to the Federal court to establish his claim but gives full effect to the provisions of the state statutes, and affirms the full power of the state to make such statutory provisions binding on all.

113 U. S. 73, *Hess v. Reynolds.* This case is in accord with Yonley v. Lavender, last referred to, but the only question involved was the right of removal.

119 U. S. 587, *Boyce v. Chapman.* In this case, a proceeding in equity, administration proceedings in the state of the domicil of the deceased had been abandoned, and no notice had been given to creditors. It was insisted that ancillary administration proceedings in another state had barred the creditor's claim, but the contention was overruled upon the ground that he had the right to collect his claim in the principal administration, and was not required to resort to the ancillary administration.

143 U. S. 215, *Lawrence v. Nelson*. This was an action in equity to charge the administrator, on the grounds of his fraud, with the payment of a judgment rendered against him as such administrator in an action in which he had voluntarily appeared. It was held that under such circumstances he was bound by the judgment, and that under the decisions of the Supreme Court of Illinois the settlement of the estate in the Probate Court of Illinois was not a bar to the action.

We respectfully submit that the judgments of the Circuit Court and Circuit Court of Appeals should be reversed.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.

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Supreme Court of the United States.

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OCTOBER TERM, 1901.

No. 240.

SECURITY TRUST COMPANY, as Administrator of the estate of Sumner W. Matteson, deceased,

Plaintiff in Error,

vs.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah,

Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

EDMUND S. DURMENT,
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Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR.

Counsel for defendant in error in their brief have seen fit to go outside the record and state some things, and insinuate others, relative to the case of *State ex rel. Matteson v. Probate Court of Ramsey County*, which have no foundation in the record in that case, nor in fact outside the record, but exist

only in the imagination of counsel for defendant in error, which requires a statement by us in reply.

The issue in that case was not in any sense a feigned issue. The Supreme Court of Minnesota was not imposed upon. Neither defendant in error, the counsel, nor any other person was kept in ignorance of the proceeding. The action from beginning took the usual and only possible course of such litigation, was contested vigorously and publicly argued in both courts. Likewise the fact that the action was pending and of the argument of the cause in the District Court were published in the daily newspapers in the city where counsel for defendant in error reside. The fact that the relator is a brother to Charles D. Matteson is immaterial. No one except defendant in error or a member of the Matteson family could bring the action, and defendant in error would not do so but was seeking to hold the relator personally liable for the claim. There was ample time after the decision of the Supreme Court became public property, in which counsel could have called the attention of the court to the alleged imposition which counsel now assert had been practiced upon the court and could have applied for a re-argument and an opportunity to be heard. So far as the misnomer in the title as placed on the calendar is concerned, we have this to say: The case was entered in the Supreme Court under its proper title, as the decision of the Supreme Court shows.. Neither counsel had any control of the printing of the calendar and the mis-spelling was that of the clerk or the printer, probably the printer.

It is a little strange that all the courts of Minnesota should be so stupid as to allow counsel to so mislead and impose upon them, when counsel for defendant in error could so readily discover the imposition. The fact that counsel do not attempt to meet the decision, nor its reasoning, but simply to discredit it by such baseless charges is significant that in their opinion the decision is against them and unanswerable.

The facts are these: The counsel for defendant in error had filed in the probate court a certified copy of the judgment now before this court. Then, instead of applying to the probate court for payment of the judgment, *as they say on page 4 of their brief they should do*, they commenced an action in the federal court against the relator in the case of *State ex rel. Matteson v. Probate Court of Ramsey County*, to recover from him as an heir of the deceased. Thereupon said relator attempted, in accordance with the theory of counsel for defendant in error and the decision of the Circuit Court of Appeals, to have the probate court compel the administrator to take steps to pay the judgment. The probate court refused to act, taking the ground that the administration was closed, the administrator *functus officio* and the court without jurisdiction. Thereupon the relator applied to the District Court for a writ of mandamus, which being denied he appealed to the Supreme Court. The case went before the District and Supreme Courts and was heard in both courts in the usual and the only way possible. The appellant urged upon the Supreme Court of the state the

decision of the Circuit Court of Appeals, and made quite as elaborate and strong a brief on the questions involved as counsel for defendant in error made for the Circuit Court of Appeals. In that brief, not only the decision of the Circuit Court of Appeals in this case, but the other authorities cited by defendant in error in their brief in that court were urged upon the Supreme Court of Minnesota. Nothing was concealed from the Supreme Court of the state and both sides of the question involved were as fully and fairly presented to that court as in the Circuit Court of Appeals.

We file herewith, as an exhibit A to this reply brief, the printed record and briefs on which that decision was rendered in the Supreme Court of the State. If it be material, this court can determine for itself from an examination thereof, whether the Supreme Court of Minnesota was imposed upon in that case.

The counsel for defendant in error urges that the opinion in that case is entitled to no weight in the Supreme Court of the United States, because Judges Lochren and Sanborn are familiar with the laws of Minnesota.

However, familiar Judges Lochren and Sanborn may be with the laws of Minnesota, the Supreme Court of Minnesota must be conceded an equal familiarity therewith and its judgment must be accorded greater weight than theirs as to what is the law of Minnesota. Neither the controversy involved in that case nor the parties thereto were then before the federal court. Not only had the state court

the right but it was its duty in that case to expound the law of Minnesota. It announced no new doctrine in that decision, but if it had done so it was an authoritative exposition of the law of Minnesota and ought to be recognized by this court.

Gen. St. 1894, Sec. 4532 referred to by counsel for defendant in error has no application to the questions involved. It has reference to the payment of claims and legacies in the course of administration and before final settlement of the estate.

EDMUND S. DURMENT,
ALBERT R. MOORE,
For Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

SECURITY TRUST COMPANY,
As Administrator of the Estate of Sumner W. Matteson, Deceased,
Plaintiff in Error,

vs.

WILLIAM H. DENT,
As Receiver of the First National Bank of Decorah,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

ADDITION TO STATEMENT OF PLAINTIFF IN ERROR.

To the statement made on the first three pages of the brief of plaintiff in error, we desire to add, that the promissory notes upon which action was brought in the circuit court and set forth in full in the printed record herein, were contracts made and to be performed outside of the State of Minnesota, being contracts made in the State of Iowa and to be performed in the State of Iowa; that

probate proceedings were instituted in the State of Iowa shortly after proceedings were instituted in Minnesota; were ancillary to the proceedings in Minnesota; were pending during the time of the proceeding, set forth in the printed record of the probate court herein, and are now pending; that Charles D. Matteson, the secretary of the plaintiff in error is administrator of the estate of said Sumner W. Matteson in Iowa.

The administrator was never discharged by order, judgment or decree of the probate court and there was no record or file in the probate court at the time of the commencement of this action showing that it had complied with the order of distribution.

As to the statement on the fourth page, concerning the opinion of the trial court, we are in doubt as to the correctness thereof, for the reason that the trial court made only a general order for judgment and did not state upon what grounds it awarded judgment in favor of defendant in error.

Defendant in error insisted in the circuit court and also in the circuit court of appeals that, the order of the judge of the probate court has not the force and effect of a statute law.

ARGUMENT.

I.

As we understand the position of plaintiff in error, it is,

First, that the allowance of the account of an administrator and entry of a decree of distribution, *ipso facto*, discharges the administrator, terminates his trust, and suit cannot be thereafter maintained against such administrator;

Second, that, while the federal courts have jurisdiction of the claims against deceased persons, divers citizenship being shown, such jurisdiction must be acquired within the time prescribed by the judge of probate for the presentation of claims in the probate court under the state law;

Third, that such order of the probate court has the full force and effect of a statute of limitations, and that the failure to present claims to the probate court or to bring suit in the federal court within the time limited by the probate court for the filing of claims in said court, bars any action on said claims against the administrator, in the federal court;

Fourth, inferentially, that no action will lie against an administrator in the federal court, unless the claim is first filed in the probate court, appealed to the district court of the state and then removed to the federal court.

Defendant in error contends for the converse of these propositions.

We wish to define clearly the position of defendant in error in prosecuting these actions at law.

We do not contend that the right exists, by virtue of the judgment entered herein, to interfere with the possession of the property belonging to said estate while in possession of the probate court of the state, and we concede that, so long as the property of the estate remains under the jurisdiction and control of the probate court, it is not subject to interference by levy under execution or otherwise, or any process issued out of this court, but that application must be made to the probate court for payment of such judgment. The question is simply "debt or no debt," and that is all the judgment herein adjudicates. If payment is sought, application must be made to the probate court to reach funds under the jurisdiction of the probate court; or, if the property has passed from the jurisdiction of the probate court into the hands of the distributees, then it can be recovered from such distributees only by a proper action in equity and in a manner which will not disturb the possession of the property under the jurisdiction of the probate court.

In other words, the position of defendant in error is that this action is for the purpose of obtaining a judgment payable *de bonis testatoris* for the purpose of arresting the property in the hands of the administrator before it shall be distributed to the heirs at law, and, if sufficient property be not found in the hands of the administrator, that it shall

constitute a foundation for an action in equity, in the event that such action becomes necessary for the payment of the claim of defendant in error.

As we understand the law, it was necessary for defendant in error to exhaust his legal remedy before he could maintain an action in equity against the distributees. (*Walker vs. Brown*, 63 Federal Reporter, 204.) But he was not compelled to postpone the institution of his action at law until all of the personal property had passed from the administrator to such distributees.

At the time of the commencement of the action in the circuit court, so far as the records of the probate court show or it could be ascertained, the administrator was in possession still of all of the personal property belonging to said estate,—an amount far in excess of that required to satisfy the claim of defendant in error,—and had action in equity been brought (if such action would lie while an action at law would be efficacious) the right to resort to said personal property would be waived, for the reason that, if the administrator was, as the records of the court show, in possession of the property, an action would not lie against the distributees who had not received it.

Just what is the contention of plaintiff in error as to the right of action in the federal court, we find it difficult to determine, for, while plaintiff in one paragraph of his brief asserts that he does not

deny the right of defendant in error to sue in the federal courts to establish this claim and does not deny that the method of procedure must be the same as in other actions at law brought in the federal court, the only logical conclusion to be drawn from pages 36, 37, 38 and 39 of brief of plaintiff in error is that the circuit court could acquire no jurisdiction whatsoever. Even on the theory that it concedes that the federal court has jurisdiction, it denies there exists any remedy whatsoever.

Prior to *State ex rel, Matteson vs. Probate Court*, 87 N. W. Rep. 783, the supreme court of the State of Minnesota had held no further than that the effect of a decree of distribution was only the settlement of the administrator's account and the assignment of the property to the heirs. Beyond this the court had not gone. It is true there are some loose expressions in two of the decisions of our supreme court which, as disconnected utterances, might be some basis for the assertions of the plaintiff in error; but, when construed in connection with the issues involved in the case, they will not bear the interpretation sought to be placed upon them.

At common law, the office of the administrator does not terminate during his lifetime, unless he be removed by a court of competent jurisdiction; and, while it is the aim of American legislation to make the office a temporary one, closing

with the accomplishment of the purpose for which it was created, we believe that specific and positive legislation is necessary to clothe the probate court with power to enter a decree discharging an administrator, and this we believe is true whether such probate court is a court created by constitution or by act of legislature. The distribution of the assets of an estate, and divesting the probate court of jurisdiction over the property, is a far different thing from the discharge of an administrator. Until such decree is lawfully entered by the probate court discharging an administrator from further liability and such decree is in pursuance of a statute authorizing the same, the trust continues, in contemplation of law, and the administrator remains clothed with the duties and authorities of his office. *Vol. 2, American Law of Administration*, pages 1255-6-7; sections 251-2-3. A few only of the states of the Union have enacted provisions for the discharge of administrators. It is conceded that there is no such provision in the statutes of Minnesota. California has such provision and, in substance, provides that when the estate has been fully administered and it shall properly appear that the executor shall have paid all sums of money due from him, "the court shall make a decree discharging him from all liability to be incurred thereafter."

In *McCrea vs. Haraszthy*, 51 Cal. 146, the Court say:

"No such decree appears to have been made by the probate court. The mere allowance of the final decree appearing to have been made, obviously, is not the legal equivalent of such decree. Such an account allowed does not even import all the conditions presented by the statute as prerequisite of a decree discharging the executor and terminating hist trust. But if it did, the decree duly entered would still be necessary for that purpose. Until the entry of such a decree, the trust still continues in contemplation of law and the executor remains clothed with the duty and authority of his office. Nor is any decree of distribution shown to have been entered in the probate court. The allowance of the final account of the executor is not a decree of distribution, or the legal equivalent of such a decree, and this for the reason already mentioned in reference to a decree in terms discharging the executor from his trust."

See, also,

Dohs vs. Dohs, 60 Cal., 255.

On page 1256, American Law of Administration, after saying that some probate courts have entered orders discharging administrators or executors in the absence of a statute authorizing such order, the author continues:

"However consistent such ruling may be with the spirit of the system of administration, it is not quite clear that either a final settlement after a discharge by the Court or an order of discharge not authorized by statute can relieve an executor or administrator of the duty imposed upon him by law of collecting assets discovered after final settlement and administering them by payment to creditors, legatees or distributees, or protect him against liability for assets concealed by him and not accounted for in his inventory or settlement, until a decree is entered by the probate court dis-

charging him from further liability, in pursuance of a statute authorizing such decree, the trust continues in contemplation of law, and he remains clothed with the duties and authority of his office."

It is conceded that no order, judgment or decree was ever entered in the probate court discharging the defendant as administrator of the estate of Matteson, further than the order of distribution and the settlement of the administrator's account.

In

Silzman et al. vs. Pacquette et al., 13 Wisconsin 325,

it appears that letters of administration were issued to H. L. Dousman and Joseph Pacquette in the estate of Pierre Pacquette, deceased; that thereafter such administrators filed petition in the probate court in Wisconsin stating that they had duly administered upon said estate, had settled and adjusted the personal estate belonging to the deceased, and had distributed the moneys arising therefrom among the creditors, praying that their accounts might be settled and that they be discharged from their trust as administrators. An order of the court was entered, in which it was decreed that, in accordance with their petition, their accounts be accepted and they be discharged from any farther liability or responsibility on account of said estate. This order was entered May 17, 1841. In 1845 Alfred Bronson presented a petition to said probate court stating that, at the request of Dousman, agent of the principal creditor of said estate,

he prayed the court to grant unto him, the said Bronson, letters of administration *de bonis non* of said estate. The petition was granted. Letters of administration *de bonis non* were granted to said Bronson. Thereafter Bronson applied to the Court to sell real estate of which the said Pierre Pacquette died siezed and the sale was made, and thereafter action to recover the land was instituted by the children and heirs at law of Pierre Pacquette, on the ground of invalidity of said sale. There was no provision in the statute of Wisconsin for a decree discharging the administrator, nor was there any provision for the resignation of an administrator, except for certain causes, which causes were not the basis for the discharge of these administrators. While it is true that the decision in this case was rendered upon the ground that no authority existed either in law or by virtue of the facts for the appointment of the administrator *de bonis non*, yet the entire decision is based upon the theory that an administrator once appointed remained in the exercise of his trust unless discharged by the decree of the probate court appointing him, under authority of the statue providing for the entry of such decree. The administrator was discharged by order of the court, yet the court held the decree void, and the sale made by the administrator *de bonis non* of no effect.

The gist of the decision is contained on page 340, in the following words:

"No rule is better settled than that these courts derive their powers from the statute, and can exercise none except those which the statute gives, and that, so far as acquiring jurisdiction over the subject-matter is concerned, the statute must be strictly complied with. In the language of the Court of Appeals, *Simpel vs. Waffel*, 16 N. Y. 185, 'these principles are elementary, and no citation of authority to sustain them is necessary.'"

While the probate court may have divested itself of its jurisdiction over the property of the estate by the entry of the decree of distribution, yet, from the statement of facts in the case at bar, it was plainly the view of the probate court of Ramsey County, and also of the administrator, that the administrator was not discharged by the settlement of his account and the decree of distribution, for, after the entry thereof, a claim against the estate was allowed by the administrator and was paid, and long subsequent to the entry of such order, property was discovered which was not included in the inventory of the estate, or in the so-called decree of distribution, and a petition was made to the Court to include such property. The petition was entertained and the Court made its order amending its decree of distribution in order that the description of the after-discovered property might be inserted therein. Both the Court and the administrator, therefore, continued in the exercise of a jurisdiction over this estate until very near to the time of the commencement of this action, and thereafter, the administrator assigned stocks and bonds, as such administrator.

There is not a record of the court to show that the order of the court in the final distribution of the estate was ever complied with on behalf of the administrator, and, we submit that the action of both court and administrator shows that neither interpreted, or for a moment thought, that the final decree, so-called, terminated the trust imposed upon such administrator.

Schmidt vs. Stark, 61 Minnesota 91, is cited by counsel as holding that the administrator is discharged by virtue of the entry of a decree of distribution. The gist of that decision is, "if *such action* is necessary resort must be had to some other forum, for the probate court has no further jurisdiction." The Court does not here refer to jurisdiction of the person of the administrator, but jurisdiction over the property, as is clearly indicated in the first portion of the decision.

An order of distribution in nowise terminates the life of the administrator, for, under section 4532, there may be several distributions. 4532 is as follows:

"Further Orders of Distribution, When.—If the whole of the debts and legacies are not paid by the first distribution and if the whole assets have not been distributed, or if other assets afterwards come to the hands of the executor or administrator, the probate court may from time to time make further orders for the distribution of assets."

The Court, in the case last above cited, say: "If an *action* is necessary"—but no action can be com-

menced or maintained in the probate court; proceedings may be instituted to call an administrator to account for disobedience to the order of the Court; but this is in no sense an action. The entry of an order of distribution does not terminate the jurisdiction of the probate court over the administrator, but there vests continuously in the probate court power to discipline its officers and those within its jurisdiction for refusal to obey its proper orders and its lawful decrees.

The vice of plaintiff's position is that it assumes that because an *action* will lie in the district court, that therefore the administrator is absolved from all obligation to the probate court. The supreme court of this state has never said, except in 87 *N. W. Rep.* above cited, that the probate court is without authority to compel obedience to its orders and its decrees or to impose a penalty for refusal to comply with such orders and decrees. In the case cited, the supreme court held that the district court did not have jurisdiction of the cause of action, because the estate was not fully administered and it would not usurp the powers of the probate court in the administration of estates; and in the case at bar the circuit court finds as a fact, which finding the circuit court of appeals sustains, that the estate herein was not fully settled and the administrator was not discharged. Other reasons are apparent why the administrator is not discharged by an order of distribution, independent of the express provision of section 4532. Under the statutes of

Minnesota the homestead and household property are exempt from the liens of debts of the decedent. Suppose claims should be filed and allowed against the estate largely in excess of the exempt property and the creditors should receive ten per cent. only of their claims, and afterwards large assets of the estate should be discovered, sufficient, and more than sufficient, to pay all claims in full! Under the contention of counsel for plaintiff in error, there is no administrator in existence; the after-discovered funds are freed from the trusts imposed upon them for the payment of the indebtedness of the estate, and the heirs at law, under an order of distribution, receive all such funds and the creditors receive nothing. It would seem to us that the injustice wrought by the application of such a theory is a demonstration of its unsoundness.

Davis vs. Weed, 7 Fed. Cases (No. 3658)—a Connecticut case. The Court say:

"It may be urged that the administrator, having settled his administrator's account and having distributed the estate, is *functus officio*, and that it is necessary to apply to the probate court for the appointment of a new administrator. Distribution, as has been said, does not necessarily exhaust the administrator's powers. If he is living, he is still the representative of the estate, and if he is competent and willing to act there is no necessity for a new appointment. He has not ceased to be administrator from the fact that his account has been approved and that the estate which was in his hands at the time of the settlement of the accounts has been distributed. If new assets should be discovered, the title would vest in him, and he would be the person to reduce such estate to possession. If

it should be ascertained that a debt theretofore undiscovered was due the estate he is authorized as administrator to commence suit for its recovery."

Under the laws of Iowa, the administrator was discharged. In Connecticut, as in Minnesota, there is no statute authorizing such discharge.

The attention of the Court is called to the fact that in none of the cases cited on pages 14 and 15 of appellant's brief has the supreme court of the State of Minnesota held that the administrator of an estate was discharged by the entry of the decree of distribution, called by appellant the "final decree."

State vs. Probate Court of Sibley Co., 33 Minn. 95, was an application to the district court for a writ of prohibition to the probate court, the probate court having granted a petition to set aside a sale of real estate confirmed by the probate court more than twenty years *after the discharge of the administrator.* The Court held that the land had passed by sale and confirmation out of the jurisdiction of the probate court, saying:

"The question is not one of administration, but of adverse claim to the property, a question which must be determined by some other tribunal than the probate court," and specifically states that the administrator had been discharged.

In *State vs. Probate Court of Ramsey Co.*, 40 Minn. 296, the administrator had been discharged by formal order. Twenty years after the discharge, a petition for the appointment of an administrator *de bonis non* was filed, granted, administrator ap-

pointed and license granted to sell the real property for the payment of claims, the allowance of which, the Supreme Court said, operated as a judgment. All that was at issue and all that the Court held was that the application for license to sell came too late; that the effect of the final decree and discharge of administrator discharged the real estate from the lien of the creditors.

Stackhouse vs. Berryhill 47 Minn. 22.

In this case the question at issue was whether a will could be admitted to probate several years after the administrator had been discharged. The Court admitted the will to probate, saying:

"The effect that the filing and allowance of certified copy (of the will) may have upon the real property situated in the state * * * will remain the subject of future examination."

In *McNamara vs. Casserly*, 61 Minn. 343, the Supreme Court held that the entry of a second decree would annul the decree first entered, substantially overruling that portion of the decision in 47 Minn., page 22.

Schmidt vs. Stark, 61 Minn.,

was an action to recover one-fifth of the property of the estate, on the ground that the probate court had entered a decree awarding to plaintiff an undivided one-fifth of the estate, leaving the remainder of the estate unassigned. The Court dismissed the action on the ground that it could not award plaintiff the possession of the undivided one-fifth of the estate while the estate was in the possession

of the probate court, incidentally saying that, if an *action* should be necessary after the distribution of the estate, such action must be brought in some other forum for the probate court could not have jurisdiction.

In *Ganser vs. Ganser*, 86 N. W. Rep. 18, the language quoted in appellants' brief is from a statement of the facts of the case and not the law applicable to the case, and is in no sense a decision to the effect claimed by appellant, since the only question at issue was, "When does the statute of limitation commence to run on an administrator's bond; at the time of the entry of decree of distribution and when suit might be commenced in the district court, or from the date when leave to sue was granted by the Court?

With reference to the discharge of an administrator by formal order or decree, the supreme court of Minnesota holds (58 Minnesota, 29, *In re Charles Scheffers' Estate*):

"But there must be *some* order or decree which contains the substance of the matter, which shows that the attention of the court was directed to it and that it intended the result claimed. *That must appear with certainty beyond mere conjecture.*"

But the circuit court and circuit court of appeals both found and held that the order of distribution was *not* intended by the probate court to be a discharge of the administrator. Can it, therefore, be reasonably claimed that it "appears with certainty"?

The last case cited on page 15 of appellants'

brief, viz.: *State ex rel. Matteson vs. Probate Court of Ramsey County*, 87 N. W. Rep. 783, does hold that upon the entry of final decree of distribution assigning the whole of the estate, the property is removed from the jurisdiction of the court and the office of administrator is rendered *functus officio.*

Relative to this case we have to say that a *feigned issue was presented to the court for the purpose of forestalling the decision of this court.* The petition was presented to the probate court of Ramsey county after the case at bar was removed from the circuit court of appeals to this court. The relator therein bore no friendly relations to the defendant-in-error herein and sustained most cordial and brotherly relations to the secretary and treasurer of the plaintiff-in-error herein,—Charles D. Matteson, his brother, and who had the whole management of the Matteson estate (see printed record on page 30.)

The position was no different than it would have been had Charles D. Matteson made the petition to the probate court for an accounting which he himself must file as such secretary. Defendant-in-error herein was kept in ignorance of the pendency of said proceedings in both probate and district and supreme courts, and offered no opportunity in any of said courts of intervening or presenting any brief or argument in behalf of said defendant-in-error. Said cause was never on the calendar of any General Term of the District Court,

was entered on the October calendar, A. D. 1901, of the Supreme Court of the State of Minnesota, being No. 180 under title of "*State of Minnesota ex rel. M. Matthews, Relator-Appellant, vs. The Probate Court of Ramsey County.*" Counsel for plaintiff-in-error herein was counsel in said cause for the respondent, the Probate Court of Ramsey County. *Both appellant* and *respondent* in said case were seeking and desirous of obtaining a decree of the Supreme Court of the State of Minnesota of the nature of the decision rendered in said cause for the purpose of forestalling the decision of this court. The issue was feigned and the cause an imposition upon the Supreme Court of the State of Minnesota and obtained under conditions that entitle it to little weight in this court. The writ of *mandamus* was issued to the probate court September 5th, heard by the district court on September 7th; judgment entered on the same day and appeal taken to the Supreme Court of the State on the 11th of September. The Supreme Court convened October 1st and the case was argued October 15th, decision rendered November 1st; all in the year 1901.

The federal courts obtained jurisdiction of the case at bar and all of the issues therein involved, January, 1897, and it seems to us that the language of the Circuit Court of Appeals of the Eighth Circuit, in

Starr et al. vs. Chicago, R. I. & P. R. R. Co. et al., 110 Fed. Rep. 3.

on page 8, is applicable to said case.

"In other words, the effect of these later actions is to toll off to another court the question which has long been and still is properly in litigation here. * * * and forestall and nullify any decision and decree of this court regarding issues of which it first lawfully took jurisdiction. The impropriety and inadmissibility of such a proceeding, in the light of the fundamental rules of our judicial systems, to which we have now adverted, is so manifest that we have no doubt that the learned attorney general, when his attention is once directed to them, will at once perceive the propriety and necessity of suspending all action in other courts involving the unconstitutionality of this law, and the right and duty of this railroad company to reduce its charges to those there prescribed, until this court, which first acquired jurisdiction of the issues and the parties, has finally determined the questions presented. * * * The enforcement of this rule, that the court which first takes jurisdiction must retain and exercise it to the exclusion of all proceedings in other courts until its jurisdiction is exhausted by the final judgment or decree, and by its effective execution, is indispensable to prevent unseemly conflicts between courts and their officers, and "confusion worse confounded."

It is true that the issue between the state court and the federal court in the case last above cited is not at all identical with the proceeding here and the case is not at all identical with the cases at bar and *State ex rel. Matteson vs. Probate Court of Ramsey County;* but the same principle is involved in both and we submit that the decision of the Supreme Court of Minnesota in *State ex rel. Matteson vs. Probate Court of Ramsey County* should receive little, if any, weight by this court in the consideration of this case.

II.

The defense interposed to the action by plaintiff in error is in effect *plene administravit*. Is this any defense to an action to determine the validity of the claim of these creditors against this estate in this court? This action is brought for the purpose of determining only the validity of the claim of these creditors. In *Corington vs. Burns' Administrators*, 1 Dillon, 16, Judge Dillon says:

"This is an ordinary action against the administrator upon the contract of endorsement made by his intestate. The plaintiff seeks simply to judicially establish his claim against the estate. The statute of Missouri in terms declared that any person having a demand against the estate may establish the same by the judgment or decree of some court of record. (Gen. Stat. 1865, 502, et seq.) The right of the plaintiff to bring this action is clear and undisputed. *Payne vs. Hook*, 7 Wall. 425.) Each of the pleas demurred to is, in fact and substance, a common law plea of *plene administravit*, viz.: that the defendant has now no assets, but had, before the commencement of this action, fully administered the same. The demurrer raises the question whether, under the laws of the state of Missouri, the plea of *plene administravit* is a defense, or presents an issue which it is proper to try in an action of this character, to-wit: an action merely to establish the validity and amount of the debt against the estate.

"The modes of the administration of the estates of deceased persons in England and in most of the American states are in many respects very different. In England, if an administrator suffered a judgment to go against him by default, or failed to plead that he had fully administered, such a judgment was held to be a conclusive admission by the administrator that he had assets sufficient to pay it, and in effect bound the administrator

personally, and amounted to an appropriation of such assets to the payment of the judgment. Hence the reason and also the necessity for such a plea.

"Not so, however, here. Whether the administrator does or does not defend, he is not bound personally, and there is no judgment *de bonis propriis*, and no execution against either the goods of the administrator or of the decedent. The judgment simply establishes the debt and orders it to be paid by the administrator in due course of administration. *Armstrong vs. Cooper*, 11 Ill. 560; *Laughlin vs. McDonald*, 1 Mo. 684. Under the laws of Missouri, the administrator is liable only to the extent of the assets received, and for waste and mismanagement. The statute classifies the debts against the estate, and directs the mode and order of payment by the administrator. A judgment such as the plaintiff seeks is no evidence that the administrator had assets or that he has been guilty of any default; and any inquiry of that kind in an action such as the present is entirely collateral, and it does seem to us manifestly improper.

"For the reasons above given, the courts in other states have held, under statutes like that of Missouri, that a plea of *plene administravit* is not a good plea. *Allen & Wf. vs. Bishop's Executors*, 25 Wendell, 414; *Baker's Executors vs. Gainor's Executors*, 17 Wend. 559; *Butler vs. Hempstead's Administrators*, 18 Wend. 666; *Judy vs. Kelley*, 11 Ill. 211.

"In deciding, in the case last cited, that a plea of *plene administravit* is no answer to an action brought against an administrator, upon a debt due by his intestate, Treat, C. J., remarks that such a plea "presents no defense. At common law the failure of an administrator to plead want of assets, or that he had fully administered, operated as an admission on his part that he had assets sufficient to satisfy the demand; and he was afterwards estopped from asserting that he had no as-

sets, or that he had fully administered. Hence the necessity of this class of pleas. The case is different under our statute. * * * A judgment against an administrator only establishes the debt against the estate, to be paid in due course of administration. The creditor is not entitled to execution on his judgment, either against the administrator or the property of the intestate. *Welch vs. Wallace*, 3 Gilm. 490. This change in common law dispenses with the plea of *plene administravit*, and renders it wholly unnecessary. It is in fact no defense to an action against an administrator.

The same reasons obtain in this state. Whether the administrator has or has not assets, has or has not been guilty of waste or mismanagement, are questions which may be hereafter tried, if the plaintiff establishes his debt; but it is premature to try them now and improper to introduce such extraneous issues into this suit."

In *Allen vs. Bishop's Executors*, 25 Wendell, 414, Judge Nelson says:

"There are some sections in the revised statutes which it is impossible to reconcile with the general system prescribed in respect to the settlement of estates of deceased persons. The system itself does not seem to have been fully comprehended by its authors. A pro rata distribution among the creditors of a class in case of deficit in assets is a fundamental principle for the enforcement of which abundant provision has been made. The whole fund is brought under the control of the surrogate, and not a dollar can be touched without his assent. Executors and administrators are but trustees to settle the estate under his direction and control, agreeably to the principles of the statute. Nothing is gained by obtaining a judgment against them beyond liquidation of the debt. The creditor gets no cost except at the discretion of the court, and only his pro rata share of the judgment. The result is the same whether the suit be defended or

not. 18 Wendell, 666; 12 Wendell, 542; 17 Wendell, 559.

"The plea of *plene administravit*, therefore, seems altogether inappropriate and useless. It has already been held in the case last cited above that the plea of *plene administravit praeter* is no longer a bar."

That the estate is not absolutely defunct and that it continues in legal effect to exist for certain purposes, and if so existing the office of administrator also exists, is held in

Matteson vs. Dent, 20 Sup. Ct. Rep., 419.

III.

Plaintiff in error contends that because the action herein was not commenced within the time limited by the probate court for the presentation of claims in that court, that the action is barred by limitation; that the limitation of time within which a claim must be presented to the probate court is a general statute of limitations binding alike upon the state and federal courts.

No statute like that of the State of Minnesota has ever been construed by the federal court, except, possibly, the statute of Wisconsin construed in *Hartman vs. Fishbeck*, 18 Fed. Rep. 29. Section 4511 provides that all claims arising upon contract must be presented to the probate court within the time limited by the judge of probate, and if not so presented are forever barred. Section 4514 pro-

vides that no action at law for the recovery of money shall be brought in any of the courts of the state against any administrator, upon any claim or demand which may be presented to the probate court. The statute, in express terms, prohibits suits in the federal courts. It provides that all claims not presented to the probate court *are forever barred.* The presentation of a claim to the probate court has the same force and effect as the filing of a complaint in a *nisi prius* court. It gives the court jurisdiction of the subject matter of the claim and of the creditor. By presenting his claim to the probate court, the creditor invokes the aid of said court and is bound by its judgment and decree. The procedure in probate court, if a claim is disputed, to try the issue of fact is as formal as in the district court, except that no jury is permitted, and the "allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate."

Counsel is in error when he says, on page 33 of his brief, that the presentation of a claim to the probate court for allowance cannot be said to be a suit of a civil nature at common law or in equity; that it does not meet one of the requirements of such suit; that there is no suit until the appeal; that the appeal is the commencement of the suit; that it is only a judicial determination of issues between parties after examination before a court in a proceeding in which the parties have the right to call witnesses and introduce evidence and to be

heard, which it is not competent for the state to confine to its own courts.

Unless counsel means by this that the probate court has exclusive jurisdiction to the exclusion of the federal court, we are unable to fathom his meaning. The practice in the probate courts of this state is well known to counsel. From his long and successful litigation in those courts, counsel will not deny that in every respect, save that of a jury, claims in the probate court are tried as in the district court; parties are heard, witnesses sworn and testify in all respects as in equity cases in the district court.

Counsel's argument before the circuit court of appeals is sounder than his present one. On pages 27 and 28 of his brief before the circuit court of appeals, he says:

"There can be no question that the filing of a claim is the institution of a suit. The statute provides for the hearing (Sec. 4507), taking of evidence and allowance not only of matters of defense but of offsets to the claim (Secs. 4511, 4512), for an order allowing or disallowing the claim (Sec. 4517) which shall have the same force and effect as a judgment for or against the estate (Sec. 4509). Whether it is a suit at law or not, cannot be made to depend upon the name the statute gives to the tribunal nor upon the title used to designate the proceedings. It is a controversy of which the federal courts may have jurisdiction."

On pages 34 and 35 of his brief, counsel likens the procedure in the probate court to a receivership of an insolvent's estate and argues that because a creditor of such insolvent would have no

right to prove his claim by suing the receiver in the federal court, so a creditor of the estate of a deceased person would have no right to sue in any court, and particularly in the federal court, to establish his claim and file the judgment therefor in the probate court. If this is not a denial of the jurisdiction of the federal court, we are unable to understand counsel's meaning.

In answer to such proposition we simply cite the following cases:

Suydam v. Broadnax, 14 Pet. 67, 74, 10 L. Ed. 357;

President, etc., vs. Vaiden, 18 How. 503, 507, 15 L. Ed. 472;

Borer v. Chapman, 119 U. S. 587, 589, 7 Sup. Ct. 342;

Lawrence v. Nelson, 143 U. S. 215, 224, 12 Sup. Ct. 440, 36 L. Ed. 130;

Payne v. Hook, 7 Wall. 425, 430, 19 L. Ed. 260;

Arrowsmith v. Gleason, 129 U. S. 640, 667, 4 Sup. Ct. 237, 32 L. Ed. 630;

Johnson v. Waters, 111 U. S. 557, 570, 13 Sup. Ct. 906, 37 L. Ed. 967;

Hyde v. Stone, 20 How. 170, 175, 15 L. Ed. 874;

Hess v. Reynolds, 113 U. S. 73, 76, 5 Sup. Ct. 377, 28 L. Ed. 927;

Byers vs. McAuley, 13 Sup. Ct. Rep. 906.

As to right of suit in State Court, see *Oswald vs. Pillsbury*, 61 Minn. 520.

But counsel say "if the federal court had jurisdiction then suit must be brought within the time limited by order of the probate court."

Sec. 4509 (printed on page 9 of plaintiff's brief) does not contain a single characteristic of a statute of limitations. It is flexible in its terms, leaving to the probate court to say within what time claims must be presented or be barred in that court, making it discretionary with the court whether the bar may be removed or not and making the limitation depend on conditions and the will of the court, whether it shall be six, twelve or eighteen months.

The legislature has made but one limitation that is definite and concise in its terms, namely: one year and six months from the time when notice of the order is given for the presentation of claims to the probate court. All other limitations are left to the discretion of him who happens to occupy the office of judge of probate. The Supreme Court of Minnesota has said that this section is not to be construed literally, see

Hantzch vs. Massolt, 61 Minn. 366.

The decisions cited in counsel's brief construe the statutes of Missouri, of Arkansas, Nebraska and Rhode Island, which are entirely different from the statute of the State of Minnesota, for the reason that the limitation of time construed in the former is a limitation fixed by act of legislature and is not dependent upon the will or caprice of an individual; is certain and definite and is not flexible, changeable, uncertain and indefinite,—in Missouri,

two years; in Arkansas, two years; in Rhode Island, three years; in Kansas, two years.

On page 28 of brief, counsel say:

"The state has no power over the federal courts, neither to confer nor to take away jurisdiction."

But the claim that a probate judge has the right to say when an action may and may not be barred in the federal court is a usurpation of the power which counsel concedes the state does not possess. The position of counsel, in effect, is that the jurisdiction of the courts of the United States depend on the will and caprice of a judge of probate of any county of the State of Minnesota; that such judge may say to a foreign creditor, "you may bring your action in the United States court if you will, but I will prescribe the time within which you bring it, and the courts of the United States must be submissive to my will." There is no case to be found among the decisions of the federal courts, either Circuit Court, Court of Appeals or Supreme Court of the United States, which has held that such a limitation of time, not by act of legislature but by order of the judge of a lower court, for the convenience of that court, has the force and effect of a statute of limitation upon the courts of the United States.

We do not raise the question (for it is not in the case at bar) that a statute absolute in its terms that domestic contracts must be presented within eighteen months or be barred, is a statute of limitations which must be observed by this court. But

Sec. 4509 makes no limitation by act of legislature, and delegates to an individual to say what shall be a limitation on the presentation of claims. It substitutes for the will of the legislature, the caprice of an individual, and we submit that if the power vests in the legislature to delegate authority to an individual to prescribe six months period for the presentation of claims, domestic or foreign, it may well exercise the same power to limit the presentation of claims to six weeks, and, indeed, since the commencement of this action, said section 4509 has been amended by the legislature of this state by the adoption of the following proviso, viz.:

"Provided, that the judge of probate on proper proof of the affidavit of the executor or administrator that there are no debts against the estate, may limit the time in which creditors may present their claims, to three months."

We think it will not be contended that such a limitation even under the conditions named (that the administrator should present affidavit to the court of no claims existing) would apply to commercial paper running the ordinary time of three, six or nine months, made and to be performed in the city of New York, and that the holder of such paper would be excluded from participation in the distribution of an estate in Minnesota, if his claim was not filed within three months. It would be a most dangerous doctrine, the application of which would in many instances be absolute denial of justice.

As to the binding effect on the federal courts of

the statutes of this character, the best considered cases hold that such statutes have no force or effect on the federal courts, *especially in contracts made and to be performed without the state.*

In

Suydam vs. Broadnax, 14 Peters, 67,

the Court quotes, on page 73, the statutes of Alabama, and says:

"The sixth section declares that 'all claims against the estates of deceased persons shall be presented to the executor or administrator within eighteen months after the same shall have accrued, or within eighteen months after letters have been granted, and not after; and all claims not presented within that time shall be forever barred from recovery,' but excepts, among other exceptions, debts contracted out of Alabama.

"This is a statement which, by the exemption it gives to creditors and administrators from suit, would seem to imply denial to creditors of the intestate the right to sue, without respect to the foreign country or state, in our Union, where the debt was contracted. It is a general statute, without a direct application to contracts made out of Alabama; and its construction cannot be extended to such contracts. A sovereign state, and one of the states of the Union, if the latter were not restrained by constitutional prohibitions, might, by virtue of sovereignty, act upon the contracts of its citizens, wherever made, and discharge them, by denying a right of action upon them in its courts. But the validity of such contracts as were made out of the sovereignty or state, would exist and continue everywhere else, according to the *lex loci contractus*. This shows the reason for and force of the rule just given; and it may be laid down as a safe proposition that a statute discharging contracts or denying suits upon them, without *particular mention of foreign contracts, does not include them.*"

The Court further says that its decision may be put upon other grounds making the conclusion equally certain.

"They are such as are connected with the constitutional and legal rights of plaintiffs to sue in the Circuit Courts of the United States; and upon the law which under our system does not permit an act of insolvency, completely executed under the authority of one state, to be a good bar against the recovery upon a contract made in another state.

"The eleventh section of the act to establish the judicial courts of the United States, carries out the constitutional right of a citizen of one state to sue a citizen of another state in the Circuit Court of the United States; and gives to the Circuit Court 'original cognizance, concurrent with the courts of other states, of all suits of a civil nature, at common law, and in equity.' It was certainly intended to give to suitors having a right to sue in the Circuit Court, remedies co-extensive with these rights. These remedies would not be so, if any proceedings under an act of a state legislature, to which a plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the Circuit Court. * * * It must be remarked, however, that the statute of Alabama is one for the distribution of insolvent estates, not liable to the objections of a general law; and is only brought under cases mentioned, by an attempt to extend its provisions to a citizen of another state. In *Sturgis vs. Crowningshield*, it is said, 'every bankrupt or insolvent system in the world must partake of the character of a judicial investigation. Parties whose rights are affected are entitled to a hearing. Hence, any bankrupt or insolvent system professes to summon the creditors before some tribunal, to show cause against granting a discharge to the bankrupt. But on what principle can a citizen of another state be forced into the courts of a state for this investigation? The judgment to be passed, is to prostrate his rights; and on the subject of

these rights, the constitution exempts him from the jurisdiction of the state tribunals, without regard to the place where the contract may originate.' In *Ogden vs. Saunders:* 'A bankrupt or insolvent law of any state, which discharges both the person of the debtor and his future acquisitions of property, is not a law impairing the obligations of contracts, so far as respects debts contracted subsequently to the passage of the law. But a certificate of discharge cannot be pleaded in bar of an action brought by a citizen of another state, in the courts of the United States, or of any other state than where the discharge was obtained.'

"Though this is a statute intended to act upon the distribution of insolvent estates, and not a statute of bankruptcy, whatever exemption it may give from suit to an executor or administrator of an insolvent estate against the citizens of Alabama, a citizen of another state, being a creditor of the testator of intestate, cannot be acted upon by any proceedings under the statute, unless he shall have voluntarily made himself a party in them, so as to impair his constitutional and legal right to sue an executor or administrator in the Circuit Court of the United States."

In *Hartman vs. Fishbeck, Admr.*, 18 Fed. 291, the same defense was interposed as in the case at bar. A demurrer was interposed to the answer, namely: that the time limited within which claims of creditors could be presented had expired; that the plaintiff knew of the death of the intestate, but did not present his claim for allowance within the prescribed time, and that he was barred from maintaining the action. The Court says:

"The question to be determined is, Do the facts therein stated constitute any defense to this action? I am clearly of the opinion that they do not, and that the demurrer should be sustained. Un-

doubtedly, in the absence of the statute referred to, the usual common-law rule would be open to the plaintiff and could be enforced against the administrator. To maintain the defendant's contention, it must, therefore, be made to appear that the state statute operates as an abrogation of that remedy, even in the case of a citizen of another state suing in this Court. Such effect cannot be given to the statute. The special course of procedure prescribed by the statute is, of course, effective to bind all citizens of the state, and operates to protect the administrator or executor against suit by such persons. It is also probably true that if a citizen of another state, in a case like this, invokes the aid of the state court in the enforcement of a remedy, he will be remitted to the court having special and exclusive jurisdiction of the subject-matter, and be held subject to the provisions of the statute referred to. *Bank vs. Slater*, 21 Minn. 174. But it is the constitutional right of a citizen of another state, where his demand is adequate in amount, and other prerequisites to jurisdiction exist, to sue in this Court, and that right cannot be affected by the state statutes. In other words, the law of a state limiting the remedies of its own citizens in its own courts cannot be applied to prevent the citizens of other states from suing, in the courts of the United States in that state, for the recovery of any money or property there, to which they may be legally or equitably entitled. *Union Bank of Tenn. vs. Jolly's Admr.*, 18 Howard, 503.

"It is to be observed that the only question here is as to the right of plaintiff to bring this suit, and to prosecute it to judgment in this court; and there is not involved any question of the ultimate course of procedure essential to enforcement of the judgment against the estate, if a judgment shall be recovered. The statute is one which, by the exemption it gives to executors and administrators from suit, would seem to imply a denial to creditors of the intestate of the right to sue without regard to the state of which the creditor may be

a citizen, or where the debt was contracted. *Suydam vs. Broadnax*, 14 Peters, 67.

"But the judiciary act of the United States provides that the Circuit Court shall have original jurisdiction of all suits of a civil nature, at common law or in equity, where the matter in dispute, exclusive of costs, exceeds the sum or value of five hundred dollars, and the suit is between a citizen of the state where it is brought and a citizen of another state; and, as was said by the Court in the case last cited, it was certainly intended by this statute, 'to give to suitors having a right to sue in the Circuit Court, remedies co-extensive with these rights. These remedies would not be so, if any proceedings under an act of a state legislature, to which a plaintiff was not a party, exempting a person of such state from suit, could be pleaded to abate a suit in the circuit court.

"The proposition of counsel is correct, that, in the absence of legislation upon the subject by congress, the courts of the United States recognize the statutes of limitation of the several states and give them the same construction and effect as are given them by local tribunals. * * * But it can hardly be contended, I think, that the statute in question creates a limitation to which the rule or principle invoked is applicable. It is not like the general statute of limitations of the state, which, in cases of contract, limits the time of the commencement of an action to six years. Here the statute prescribes a certain course of procedure in connection with the settlement of estates, to be pursued by creditors in the enforcement of their claims. It provides a certain remedy, which is made exclusive in the state. The limitation of time within which, by statute, claims must be presented for allowance in the probate court, is inseparable from the peculiar procedure prescribed. It is part of that procedure, and so not like a general statute of limitations; and as the plaintiff here was not bound to pursue that remedy, but, being a citizen of another state, can sue in the fed-

eral court, he is not affected by a limitation which cannot be separated from the statutory mode of procedure. * * * Citing from *Ry. Co. vs. Whitton*, 13 Wallace, 285, the following language: 'In all cases where a general right is thus conferred, it can be enforced in any federal court having jurisdiction of the parties. It cannot be withdrawn from the cognizance of such federal court by any provision of state legislation that it shall only be enforced in the state court;'" quoting also from *Suydam vs. Broadnax*, *Bank vs. Jolly's Admr.*, and *Payne vs. Hook*, and saying, "Hence, the Circuit Court for any district embracing a particular state will have jurisdiction of an equity proceeding against an administrator, notwithstanding that, by a peculiar structure of the state probate system, such a proceeding could not be maintained in any court of the state."

Referring to and commenting upon *Union Bank of Tenn. vs. Jolly's Administrators*, Mr. Justice Brewer in 27 Fed. 408 says:

"By the laws of the State of Mississippi, when an administrator takes possession of an estate, if he thinks it is insolvent, he may apply to a court, obtain an order, and have notice of insolvency published, and then those creditors that come in and present their claims in this insolvent proceeding share in the assets. *If they do not come in, they do not share.* An administrator taking possession of an estate believed it insolvent, and took the regular proceedings, but when he closed out the estate he had a surplus of six or seven thousand dollars. This claimant had not presented his claim in those proceedings. Now, under the law of Mississippi, the surplus went to the heirs; but the supreme court sustained a bill in favor of this claimant as against the administrator to the extent of the fund in his hands. Well, it is familiar law that a court of equity will follow the assets of an ancestor in the possession of the heir, and apply them to the

payment of the debts of the ancestor. There may be exceptions, but that is the general rule. Now, instead of waiting for the administrator to turn the property over to the heirs, and leaving the claimant to then proceed against them, the court simply intercepted the fund in the possession of the administrator, and awarded it to the claimant creditor."

Excepting only so far as the alleged insolvency of the estate in Mississippi was concerned, we can see no difference in fact or in principle between that case and the case at bar, save only such difference, if there be a difference, as is made by the decision of the Supreme Court of Minnesota in re

State vs. Probate Court of Ramsey County, 78 N. W. Rep.

In

Cluett vs. Morgan, 17 Fed. Rep. 820,

the Court, referring to the cases hereinbefore cited, says:

"From the fact that the failure of complainant to present its claim before the auditors was not treated by the Supreme Court as an absolute bar to its bill, but only as evidence of laches requiring explanation and excuse, we are led to infer that the limitation contained in these acts was not considered applicable to non-resident creditors or pleadable as an ordinary statute of limitations in the federal courts. This inference is strengthened by reference to the earlier cases of *Suydam vs. Broadnax* and *Bank vs. Jolly's Admrs.*, although the question was not squarely presented in either case.

"The whole tenor of these decisions is inconsistent with the idea that foreign creditors are limited in their choice of a forum or subject to other limitations by act. We think the whole enactment should be read together, *and if a non-resi-*

dent creditor is not bound to prove his claim before the probate court, he is not restricted by other limitations of the act requiring all claims to be proven within a limited time. In other words, the limitation is applicable only to such claims as are required to be proven in the manner pointed out by the act. We think, too, that this ruling may be justified upon the broader ground that courts of equity are bound by the statutes of limitations in general only by analogy and may relieve against them in cases of manifest injustice."

While the case of *Hess vs. Reynolds' Admr.*, 113 U. S. 449; 5 Sup. Ct. Rep. 577, was a decision only as to the right of removal to the federal court, it contains this significant language:

"The estate of a decedent is neither a corporation nor a person. It can neither sue nor be sued. It consists of property or rights of property, the title to which passes on his death, with right of possession according to the varying laws of the states, to executors of a will, administrators of estates, heirs or devisees, as the case may be; but neither the principle of convenience nor the statutes of a state can deprive them (the federal courts) of jurisdiction to hear and determine a controversy between citizens of different states, when such a controversy is distinctly presented, because the judgment may affect the administration or distribution in another forum, of the assets of decedent's estate. The controverted question of debt or no debt is one which, if the representative of decedent is a citizen of a different state from that of the other party, the party properly situated has a right, given by the constitution of the United States, to have tried, originally or by removal, in a court of the United States, *which cannot be defeated by state statutes enacted for the more convenient settlement of estates of decedents.*"

It is idle to say that the federal court has jurisdiction to determine controverted questions of debt or no debt, and at the same time to say that while it gives a jurisdiction to determine, it can grant no remedy whatsoever.

And it is the contention of the plaintiff in error that by reason of the statute of the state of Minnesota that the defendant in error is barred of every right. We understand his position to be that, not even an action in equity will lie in the federal court because the Supreme Court of the State of Minnesota has, in construing the statute of the state, held that no action in the state court can be maintained against the devisees or heirs at law, unless the claim was, within the time limited by the probate court, presented to the probate court. As above stated, the only purpose of this action is to establish by judgment of court a debt or no debt. There was no other course for the defendant in error to pursue, because of the recorded proceedings in the probate court. So far as the records of that court show, the administrator was still in possession of all the personal property of the estate. If so, the defendant had a remedy at law and must exhaust that remedy before resorting to a court of equity for the recovery of assets of the estate that had gone into the hands of the heirs at law. It is no concern of the plaintiff in error if the payment not being made, defendant in error should fail in an action in equity against the heirs at law, but, so long as there remain assets in the hands of the

administrator, undistributed, an action in equity would not lie against the heirs at law.

Walter vs. Brown, 63 Fed. 204.

The power of the federal court ceased with the establishment of the demand, unless it becomes necessary to take further action for the purpose of compelling the administrator to recognize the validity of the federal judgment and give to it the force and effect of an adjudicated claim against the estate.

The question of the possession of, or lien upon, or jurisdiction over, the property of the estate is in nowise involved in the case at bar. The only question at issue in the Circuit Court is "*debt or no debt.*"

The plaintiff has no specific lien on the property of the estate, and is not seeking to enforce one. It does not seek to remove the estate from the jurisdiction of the Probate Court. We concede, and always have conceded, that the courts of the United States, in the exercise of their jurisdiction over parties, cannot seize or control the property while in the custody of a court of the state, cannot draw to itself the administration of the estate. And nothing of the sort is attempted in the present case. What is sought is a judgment of the Circuit Court decisive of the issue as to whether the plaintiff has or has not a claim unpaid. That judgment we file in the Probate Court of the state as a claim against the estate, allowed by a court of competent jurisdiction, and to be paid in due course of administration of the estate in the Probate Court. If the bulk

of the estate has been distributed we cannot follow the specific property into the hands of the distributees, but if there is property in the hands of the administrator, we are entitled to have it applied on such judgment. If there is not sufficient property in the hands of the administrator to satisfy the judgment, then, under the statutes of Minnesota, a creditor's bill, after distribution, will lie against the legatees on their liability to apply the assets of the decedent to the payment of his debts. Such estates are impressed with a trust for the payment of the debts of the decedent.

Borer vs. Chapman, 7 Sup. Ct. Rep. 348.

It seems to us that the error which runs through the brief of counsel is the assumption that the Federal Court seeks to infringe upon the statutory rights of the Probate Court and to disturb the possession of the property by the state court. But there is no suggestion that the Federal Court herein take possession of the estate and remove it from the custody of the state court, or interfere in any way with the property of the estate. The contention of counsel seems to be that a lien must be established on the property before it passes from the jurisdiction of the Probate Court or all right is lost; but such is not the holding of this Court in *Borer vs. Chapman*, cited above.

The Court says on page 348, *Vol. 7, Sup. Ct. Rep.*:

"Such estates are impressed with the trust which such creditor had a right to have administered for his benefit. It is upon the ground of such a trust that jurisdiction of the courts of equity primarily

rests in administration suits and in creditors' bills brought against executors or administrators, or, after distribution, against legatees, for the purpose of charging them with a liabilty to apply the assets of the decedent to the payment of his debts. As a part of the ancient and original jurisdiction of courts of equity, it is vested, by the constitution of the United States, and the laws of congress in pursuance thereof, in the Federal Courts, to be administered by Circuit Courts in controversies arising between citizens of different states. It is the familiar and well settled doctrine of this Court that this jurisdiction is independent of that conferred by states upon their own courts and cannot be affected by any legislation except that of the United States." Citing many cases, inclusive of *Payne vs. Hook*, 7 Wallace, 425, and saying:

"In *Payne vs. Hook*, the rule was declared in these words: 'We have repeatedly held that the jurisdiction of courts of the United States over controversies between citizens of different states cannot be impaired by laws of the state which prescribe the modes of redress in their courts, or which regulate the distribution of their judicial power. If legal remedies are sometimes modified to suit the changes in the laws of the state and the practice of their courts, it is not so with equitable. The equitable jurisdiction conferred on Federal Courts is the same as the high court of chancery in England possess, is subject to neither limitation nor restriction by state legislation and is uniform throughout the different states of the Union.' The only qualification in the application of this principle is that courts of the United States in the exercise of their jurisdiction over the parties cannot seize or control property while in the custody of a court of the state."

Williams vs. Benedict, 8 How. 104.

Yonley vs. Lavender, 21 Wall. 276.

Freeman vs. Howe, 24 How. 450.

In *Byers vs. McAuley*, 13 Sup. Ct. Rep. 906, cited in counsel's brief, after referring to a long line of cases decided in this Court, the Court say:

"In *Yonley vs. Lavender*, 21 Wall. 276, it was held that where the statute of a state places the whole estate, real and personal, of the decedent within the custody of the Probate Court of a county, a non-resident creditor may get a judgment in the Federal Court against the resident executor or administrator, and come in under the law of the state for such payment as that law marshaling the rights of creditors awards to creditors of his class; but he cannot, because he has obtained a judgment in the Federal Court, issue execution, and take precedence of other creditors who have no right to sue in the Federal Courts; and if he do issue execution, and sell the lands, the sale is void. * * * The recovery of judgment gave no prior lien on the property, but simply fixed the status of the party, and compelled the administrator to recognize it in the payment of debts. * * * Possession of the *res* draws to the court having possession all controversies concerning the *res*. If original jurisdiction of the administration of the estates of deceased persons were in the Federal Court, it might, by instituting such an administration, and taking possession of the estate through an administrator appointed by it, draw to itself all controversies affecting that estate, irrespective of the citizenship of the respective parties. But it has no original jurisdiction in respect to the administration of a deceased person. It did not, in this case, assume to take possession of the estate in the first instance; and it cannot, by entertaining jurisdiction of a suit against the administrator, draw to itself the full possession of the estate, or the power of determining all claims against or to it. * * *

"A citizen of another state may establish a debt against the estate (*Yonley vs. Lavender*, *Hess vs. Reynolds*); but the debt thus established must take its place and share of the estate as administered

by the Probate Court, and it cannot be enforced by process directly against the property of the decedent. In like manner, a distributee, citizen of another state, may establish his right to a share in the estate, and enforce such adjudication against the administrator personally, or his sureties (*Payne vs. Hook*) or against any other parties subject to liability (*Borer vs. Chapman*), or in any other way which does not disturb the possession of the property by the state court."

132 U. S. 484, *Rio Grande R. Co. vs. Gomila* (*Vinet*);

10 Sup. Ct. Rep. 155.

goes no further than to hold that the administration of the estate cannot be forced out of the Probate Court and into the Federal Court by any proceeding in the Federal Court. The Court say:

"We do not recall any case now where the Federal Courts have not paid respect to the principle that all debts to be paid out of the decedent's estate are to be established in the court to which the law of his domicile has confided the general administration of estates, and that judgments against the deceased, unaccompanied by a seizure of property for their satisfaction, stand in the same position as other claims against his estate, and are paid in like manner. The jurisdiction of chancery to enforce the equitable rights of a non-resident creditor in the case of maladministration or non-administration of the estate of a decedent stands upon a different principle (*Payne vs. Hook*), the rule prevailing as stated in *Hyde vs. Stone*, 20 How, 170, that the jurisdiction of the courts of the United States over controversies between citizens of different states *cannot be impaired by the laws of the state which prescribe the modes of redress in their courts or which regulate the distribution of their judicial power.*"

See, also, *Arrowsmith vs. Gleason,* 9 Sup. Ct. Rep. 240, 241;

Union Bank vs. Vaiden, 18 Howard, 473, 59 U. S. 507.

The probate court does not possess exclusive jurisdiction of the estates of deceased persons. The jurisdiction of the federal court is concurrent so far as the establishing of the debt is concerned.

Chapman vs. Borer, 1 Fed. Rep. 274.

Hess vs. Reynolds, 113 U. S. 73; 5 Sup. Ct. Rep. 378.

Within the limitation prescribed in *Byer vs. McAuley* and *Hess vs. Reynolds* and other cases cited above, the circuit court may do whatever, at any time, the probate court could have done. If the probate court possessed discretionary powers, so does the federal court. To contend otherwise is to admit a jurisdiction but deny the exercise of any rights thereunder. In the case at bar, the circuit court entertained the action and found in favor of the plaintiff, thus holding that plaintiff had a legal right; if a legal right, the exercise of sound judicial discretion must have awarded plaintiff the privilege of presenting those rights to the court.

IV.

As heretofore stated, the claims on which suit was brought in the circuit court are negotiable promissory notes made and to be performed within the state of Minnesota and held and owned part by a citizen of the state of New York and part by a citizen of the state of Iowa.

An examination of the cases cited in the circuit court of appeals and in the supreme court of the United States in counsel's brief and also in all of the cases cited from the state of Minnesota, will show that all said actions were based on domestic contracts or local causes of action and in none of said cases was the issue raised, nor could it be raised, that foreign commercial paper was not included within the provision of the administration laws of the state, except in *Sugdam vs. Broadnax* and *Borer vs. Chapman*, 7 Sup Ct. 342, the latter case arising in the state of Minnesota, but the court saying that it was not necessary to determine that issue.

In 172 U. S. 358, *M. K. & T. vs. Krumseig*, cited on page 27 of plaintiff's brief, in which the issue was as to whether or not the defense of usury was available in the federal court, it will be noticed from the portion of the decision quoted by counsel in his brief, that the decision of this court limited such right of defense only to contracts made and sought to be performed within the state, and uses this language:

"If the states, whether New York, Arkansas, Minnesota or others, think that the evils of usury are best prevented by making usurious contracts void and by giving a right to the borrowers to have such contracts unconditionally nullified and cancelled by the courts, such a view public policy *in respect to contracts made within the state and sought to be enforced therein*, is obligatory on the federal court, whether acting in equity or at law."

In *Saydam vs. Broadnax*, above cited, this court says:

"The sixth section declares that all claims against the estates of deceased persons shall be presented to the executor or administrator within eighteen months after the same shall have accrued or within eighteen months after letters have been granted and not after, and all claims not presented within that time shall be forever barred from recovery, but excepts, among other exceptions, debts contracted out of Alabama. This is a statement which, by the exemption it gives to creditors and administrators from suit, would seem to imply denial to creditors of the intestate the right to sue without respect to the foreign country or state in our Union where the debt was contracted. It is a general statute without a direct application to contracts made out of Alabama, and its construction cannot be extended to such contracts. The sovereign state, and one of the states of the Union, if the latter were not restrained by constitutional prohibition, might, by virtue of sovereignty, act upon the contract of its citizens wherever made and discharge them by denying a right of action upon them in its courts. But the validity of such contracts as are made out of the sovereignty or state would necessitate a condition everywhere else according to the *lex loci contractus*. This shows the reason for and force of the rule just given, *and it may be laid down as a safe position that a statute discharging contracts or denying suits upon them without particular mention of foreign contracts, does not include them.*"

In *Van Reimsdyke vs. Kane*, 1 Gall. 371, Judge Story says:

"The broad question is whether a discharge under the insolvency laws of a state is a complete discharge of all debts and contracts with whomsoever and wheresoever contracted, so that no action lies therefor in a court of the United States sitting within the state. * * *

"In order to clear the way for a more exact consideration of the question at bar, it may also be necessary to state that every state has within its sovereignty an authority to bind its citizens everywhere, so long as they continue their allegiance. Unless, therefore, it be restrained by constitutional prohibition, it may act upon the contracts between its own citizens in every country, and, consequently, discharge them by general laws. * * * But if a statute be general without a direct application to foreign contracts, the rule approved by Casaregis seems proper to be adopted, that its construction shall not be extended to such contracts. According to the principles, then, which have been stated, if this had been a contract between two citizens or residents of the state of Rhode Island or a contract made and to be executed in Rhode Island, the discharge under the insolvent laws of the state, would be a good bar. Ought it to be a bar, when the contract was made in a foreign country to be executed in a foreign country and between parties, one of whom was not subject to the jurisdiction of Rhode Island? It has been decided that when the contract is made in one state, the discharge in another, and suit is brought in a third state, the action is not barred. But it is contended that a different rule must prevail in the state courts of Rhode Island, and if so, then also in the courts of the United States sitting within the same state. I will consider this question in both respects and first as to the state of Rhode Island. No authority has been shown that decides that no action upon a foreign contract could have been maintained in the state

courts. It is a mere inference from the language of the act which absolves the debtor from "all debts, etc., of every nature and kind whatsoever." But if the rule of Casaregis be correct that, by the true construction of a general statute it ought not to be extended to extra-territorial contracts unless expressly so declared, the question recurs with all its force, because it will not be pretended that the legislature of Rhode Island have made such a positive provision. The general rule is that a discharge of a contract according to the *lex loci contractus* is good everywhere. The rule is founded on public convenience and the courts of nations. It would seem to follow from the same principle, that the discharge under the municipal laws of a foreign state should not affect the validity of such contract. * * *

"If, therefore, the words of that act of insolvency do not necessarily extend (as I think they do not) to foreign contracts, I can entertain no doubt that they would adjudge therein according to that equity which the usage of nations had settled and applied. I hold it to be a legitimate inference from the doctrine established that a contract made in a foreign country * * * cannot be discharged by a positive regulation of any other court to which the parties have not bound themselves to submit. * * * In controversies affecting citizens of other states and in no degree arising from local regulations, as, for instance, *forcign contracts of a commercial nature*, I think it can hardly be maintained that the laws of a state to which they have no reference, however narrow, injudicious and inconvenient they may be, are to be the exclusive guides for judicial decision. Such a construction would defeat nearly all the objects for which the constitution has prescribed a national court."

This court is untrammeled, as was also the lower courts by any judicial construction of the state court, on this issue.

The following cases have been cited by plaintiff in error:

39 Minn. 212. In this case plaintiff sought to file claim in the probate court two years after the closing of the estate and the issue was as to the discretion of the probate court to open a decree after that lapse of time. The supreme court said that the probate court had no such discretion after such a lapse of time, saying:

"While we do not think that a final decree of distribution of itself causes the estate to pass out of the court and beyond its jurisdiction so as to deprive it of the power to set the decree aside if obtained by fraud or erroneously entered by inadvertence, yet it would require a strong case to warrant a court in so doing after the lapse of two years."

47 Minn. 382, *Hill vs. Nichols*, was an action commenced in the district court against the heirs of one Potter on a six months note made by Potter in 1858. Potter died in 1867. His estate was admitted to probate July, 1889, and the administrator discharged by formal decree in 1890. The action was not commenced until a year after such final discharge. The ground on which the supreme court based its decision was that plaintiff having neglected for more than twenty years to take any proceedings to secure an allowance of and to enforce his claim against the estate, lost the right to have it allowed and enforced. He became barred by his own laches. The contract was a local contract.

61 Minn. 366, *Hautzch vs. Massolt*. The question at issue was whether or not a claim was con-

tingent. The claim was based on a guardian's bond given to the judge of probate of Hennepin county, Minnesota—a Minnesota contract. The court held it was a contingent claim, but in construing sections 104, 107, 110, uses the following language:

"If section 104 is construed literally, it would include, not only the plaintiff's claim, but all claims of every kind arising upon contract. Its language is, 'all' claims arising upon contracts, whether the same be due, not due, or contingent. These three classes include all possible claims growing out of contracts. If there are no implied exceptions in this statute as to any class of contingent claims, then, if a person dies who was a stockholder in a corporation, or had conveyed lands by a warranty deed, or signed official bonds as a surety, or given leases for a term of years, with covenants to indemnify the lessee against damages by water from the pipes on the demised premises, creditors, obligees, and covenantees who would not be forever barred of all right to any redress against his property must hasten to the probate court, and prove their claims, *within the 18 months from the giving notice of the order limiting the time to press its claims against the estate.* How can they be proved? Counsel for respondent answers: 'State the particulars of the claim under the provisions of section 104.' But, until a contingent claim becomes absolute, the amount thereof cannot be liquidated, so that it can be allowed by the court, and the amount thereof stated in the order allowing it, as required by section 110.

"But let us assume that, in order to entitle a contingent claim to be allowed, it is not necessary that it should first become absolute and capable of liquidation. Still, we are confronted with the question, how shall it be paid? The statute provides for the payment of all claims which are certain and liquidated, whether due or not due; also for contingent claims which become absolute and capable of liquidation, *within the 18 months allowed for*

the presentation and proof of claims, for, if they become absolute within the limited time, they can be paid as other claims; but, for claims which are contingent when this time expires, there is absolutely no provision of the statute for their payment, or provision for retaining in the control of the court any funds to pay them in the future in case they become absolute, or for suspending the settlement of the estate until that event occurs, if ever."

66 Minn. 246, *State vs. Probate Court of Rock Co.*, arose on certiorari to review an order of the probate court adjudging relator guilty of contempt in not obeying an order for the appointment of an agent on whom service might be made of a summons of the district court of said county in an action in the district court to determine a claim against the estate, the relator being a non-resident executor and the claim being for the non-payment of subscription to stock of a Minnesota corporation —a local contract. All the court decided was that the district court did not have jurisdiction, as the claim was not contingent and could be proved in the probate court. The presentation of the claim within the time prescribed by the probate court was not at issue.

78 N. W. Rep. 95, *Fitzhugh vs. Harrison,* was an appeal from the probate court of St. Louis county from a claim allowed against the estate, arising on a contract made and to be performed in the county. The contention of appellant was that because it was contingent, the probate court had no jurisdiction. The supreme court held that the claim was

not a contingent one and the probate court had jurisdiction. There was no issue in the case as to the presentation of claim.

63 Fed. Rep. 208, *Walker vs. Brown.* The opinion was written by Judge Thayer, who wrote the opinion in the case at bar in the court of appeals. The issue in said cause was, Can a suit in equity be maintained on a purely legal demand? We fail to find anything in the case bearing out the contention of plaintiff in error.

4 Howard, 498, *Aspin vs. Nixon.* The only matter at issue was, Did a decree of the chancery court in England constitute an estoppel in the United States courts of Pennsylvania? Under the circumstances of that case the court said it did not and, incidentally, used the language quoted in brief of plaintiff in error. Such language would be applicable if in the case at bar defendant in error sought to disturb the assets of the estate in the hands of the probate court. But such is not the case.

5 Peters, 523, *Smith vs. Union Bank.* The only issue was the classification and priority of debts, and the court held the *classification* of the state in which the estate was being administered controlled.

76 U. S. 754, *Walker vs. Walker's Executors.* The language quoted in the brief was used relative to an objection that suit should have been brought in Rhode Island where deceased had his domicile and where his estate was insolvent, rather than

in Massachusetts where ancillary administration was obtained and the estate was not insolvent. All that the court determined was that plaintiff was entitled to share in the estate equally with the Massachusetts creditors.

113 U. S. 449, *Morgan vs. Hamlet.* The Arkansas statute differs essentially from the Minnesota statute. The former makes an absolute limitation of two years; the latter, a limitation of eighteen months. Anything less than eighteen months is a limitation not by statute but by order of the court. This action was brought before the expiration of eighteen months.

132 U. S. 484, *Rio Grande R. Co. vs. Gomila*, 10 Sup. Ct. Rep. 155. All this court decided was that property of a debtor brought within the jurisdiction of the circuit court of the United States by seizure under process issued out of that court, remained in its custody to apply in satisfaction of a judgment, notwithstanding the subsequent death of the judgment debtor and probate proceedings in the state of his domicile, saying:

"The rule prevailing, as stated in *Hyde vs. Stone*, 30 Howard, 170, that the jurisdiction of the United States over controversies between citizens of different states, cannot be impaired by the laws of the state which prescribe modes of redress in their courts or which regulate the distribution of their judicial powers."

172 U. S. 358, *M., K. & T. Trust Co. vs. Krumseig*, was an action on note and defense of usury interposed. All that this court decided was that usury being a statutory defense, the federal courts deal-

ing with such questions must look to the laws of the state where the transaction took place. It was an intermediate right which was virtually written into the contract, being a law of the state in which the contract was made and where it was to be executed.

103 U. S. 559, *Ouachita County vs. Wolcott.* This court placed the decision on the ground that a proceeding was pending in the state court against the holder of county warrants which were non-negotiable instruments. Such holders of warrants assigned them to plaintiff who then commenced action in the federal court, while the proceedings in the state court were still pending. All that the case decides is that the law of Arkansas is a part of the contract of a county warrant and to be read into the contract, and when proceedings are commenced against citizens of Arkansas according to the provisions of said law, such proceedings cannot be rendered nugatory by assigning the warrants to a non-resident and such non-resident commencing action in the federal court.

72 U. S. 419, *Ewing vs. City of St. Louis.* The court held only that plaintiff had an adequate remedy at law by writ of certiorari in the state court, and for that reason an action in equity would not lie in the federal court. No principle involved therein is involved in the case at bar.

80 U. S. 243, *Ex parte McNeal.* We cannot understand in what respect the above case is at all applicable to the case at bar. The court simply de-

termined that a licensed pilot was entitled to the fees prescribed by statute of New York, whether he brought action in the state court or in the federal court. That is to say, that the measure of damage was the same in whatever court the action should be brought.

It is not improper, we think, for us to say that this case was tried in the circuit court by Judge William Lochren, who, for more than twenty years before he was appointed to the federal bench, was judge of the district court of the state, than whom there is no man in this state more familiar with the statute law of the state of Minnesota; that Judge Walter Sanborn of the circuit court of appeals, Eighth circuit, from the time of his admission to the bar until his appointment to his present position, practiced in the courts of this state and is most intimately acquainted with the decision of the courts of the state and the policy of its laws.

The case was most carefully considered by the circuit court, most thoroughly investigated by the circuit court of appeals, and we suggest that the construction of the statute laws of their own state by such eminent judges, is entitled to much weight.

We respectfully submit that the judgment of the circuit court and of the circuit court of appeals should be affirmed.

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Attorneys for Defendant in Error.

Supreme Court of the United States.

No. 42.—October Term, 1902.

The Security Trust Company, as Administrator of the Estate of Sumner W. Matteson, deceased, vs. William H. Dent, as Receiver of the First National Bank of Decorah.	On writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[December 1, 1902.]

Mr. Justice Shiras stated the facts and delivered the opinion of the Court.

This was an action brought in January, 1897, in the Circuit Court of the United States for the District of Minnesota, by William H. Dent, as receiver of the First National Bank of Decorah, Iowa, against the Security Trust Company of St. Paul, Minnesota, as administrator of the estate of Sumner W. Matteson, deceased, to recover the sum of $13,535.06, being the amount of principal and interest of certain promissory notes made by said Matteson in his lifetime, and which were the property of the said national bank. The execution and ownership of the notes were not denied, nor that the Security Trust Company had been, on September 3, 1895, duly appointed by the probate court of Ramsey County, Minnesota, administrator of the estate of said Matteson.

The defendant, however, alleged in its answer that the action was not brought until after the expiration of the time limited by the order of the probate court for the filing, examination and allowance of claims against Matteson's estate, nor until after the examination and allowance of the administrator's final account, whereby, under the laws of the State of Minnesota, the official existence of the defendant company as administrator had ceased, and that therefore no action could be maintained against it; and also that the right to a judgment on the notes in suit was, by the laws of Minnesota, forever barred, notwithstanding they were owned by a non-resident of the State, and that recovery was sought in a Federal court.

The plaintiff obtained a judgment in the Circuit Court, and that judgment was affirmed by the Circuit Court of Appeals for the Eighth Circuit. The case is reported in 104 Fed. Rep. 380. The cause was then brought here by a writ of error. We think the proper course was to have asked

for a writ of certiorari to bring the final judgment of the Circuit Court of Appeals here for review. However, under the powers possessed by us under the judiciary act of March 3, 1891, we now allow a writ of certiorari, and direct that the copy of the record heretofore filed under the writ of error shall be taken and deemed as a sufficient return to the certiorari.

The questions presented are similar to those just decided in the case of *Security Trust Company* v. *Black River National Bank*, tried in the same court, and where the parties were represented by the same counsel which appear in this one.

Accordingly, for the reasons given in the opinion in that case, *the judgment of the Circuit Court of Appeals is reversed; the judgment of the Circuit Court is likewise reversed, and the cause is remanded to that court with directions to enter judgment in accordance with the opinion of this court.*

True copy.

Test:

Clerk Supreme Court, U. S.